

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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JUDICIAL MERIT SELECTION COMMISSION

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TRANSCRIPT OF PUBLIC HEARING

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8

BEFORE: SENATOR GEORGE E. CAMPSER, III, CHAIRMAN

9

REP. BRUCE W. BANNISTER, VICE-CHAIRMAN

10

SENATOR GERALD MALLOY

11

REP. G. MURRELL SMITH, JR.

12

REP. J. TODD RUTHERFORD

13

KRISTIAN C. BELL

14

MICHAEL HITCHCOCK

15

SENATOR GREG HEMBREE

16

ANDREW N. SAFRAN

17

JOSHUA L. HOWARD

18

ELIZABETH H. BROGDON, CHIEF COUNSEL

19

20

DATE: November 14, 2016

21

TIME: 10:50 a.m.

22

LOCATION: Gressette Building, Room 105

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1101 Pendleton Street

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Columbia, South Carolina 29201

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REPORTED BY: LISA F. HUFFMAN, REPORTER

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Legend of the Transcript

- dashes [--] Intentional or purposeful interruption
- [ph] Denotes phonetically written
- [sic] Written as said

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P R O C E E D I N G S

CHAIRMAN CAMPSEN: We're now back on the record. For the record, I would like to state that we have been in executive session. However, no decisions were made, no votes were taken during executive session.

CHIEF COUNSEL BROGDON: Mr. Chairman, at this time I would like to present the Commission with the judicial seats that we expect to screen for the Fall 2017 elections, which is in the Commission Members' notebooks under Tab F.

CHAIRMAN CAMPSEN: Okay. We have the Tab -- behind Tab I, you have the -- F. Excuse me. Behind Tab F, you have the candidates for the Fall screening and you've had an opportunity to review that. Ms. Brogdon, you want to bring up the exhibits from the Citizen's Committee?

CHIEF COUNSEL BROGDON: I do. Mr. Chairman, I'd like to offer and have made exhibits to the record the following: The Citizens Committee Reports from the Lowcountry, Midlands, Pee Dee, Piedmont, and Upstate for the Fall of 2016 as well as the

1 South Carolina Bar's Judicial Qualifications
2 Committee Report for Fall 2016.

3 CHAIRMAN CAMPSSEN: Are there any
4 objections?

5 (No response.)

6 CHAIRMAN CAMPSSEN: Hearing none, I ask at
7 this time that the Citizens Committee Reports
8 for the Fall of 2016 and the South Carolina
9 Bar Report be marked as exhibits and entered
10 into the public hearing record.

11 [EXHIBIT 1, CITIZENS COMMITTEE REPORTS
12 FOR THE FALL OF 2016, ADMITTED.]

13 [EXHIBIT 2, SOUTH CAROLINA BAR REPORT,
14 ADMITTED.]

15 CHAIRMAN CAMPSSEN: That's all the
16 business we have now for the Commission.
17 We'll now proceed into the candidate portion
18 of the hearing. We welcome Judge Nicholson.

19 JUDGE NICHOLSON: Thank you very much.

20 CHAIRMAN CAMPSSEN: Please raise your
21 right hand.

22 (The Judge is sworn in.)

23 CHAIRMAN CAMPSSEN: Have you had an
24 opportunity to review your personal data
25 questionnaire and sworn statement?

1 JUDGE NICHOLSON: Yes, sir.

2 CHAIRMAN CAMPSSEN: Are they correct?

3 JUDGE NICHOLSON: The original, I think,
4 question -- I don't remember if it's 12 or 14.
5 It was one question on there about have I been
6 sued since the last time I was screened; I put
7 "No." Last week -- week before last, Heather
8 Anderson called me and said that they had
9 found that I had been, but I didn't know about
10 it because I was never served. Judge Young
11 had dismissed the case that arose out of
12 apparently reading his order out of a
13 Magistrate's Court case over in Mt. Pleasant
14 and I heard the appeal. He sued me and the
15 City Attorney and the Magistrate and everyone
16 and Judge Young dismissed it because of lack
17 of service. I just didn't know about it. I
18 wrote a letter, I believe, to Heather Anderson
19 trying to correct that particular part of my
20 personal.

21 CHAIRMAN CAMPSSEN: Do you object to
22 making these documents and this letter that
23 you sent to the Commission part of the record
24 of your sworn testimony?

25 JUDGE NICHOLSON: No, sir.

1 CHAIRMAN CAMPSSEN: Okay. It will be done
2 at this point in the transcript. Will staff
3 now give the PDQ and sworn statement to the
4 court reporter?

5 [EXHIBIT 3, JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR
7 THE HONORABLE J.C. NICHOLSON, JR., ADMITTED.]

8 [EXHIBIT 4, SWORN STATEMENT FOR THE
9 HONORABLE J. C. NICHOLSON, JR., ADMITTED]

10 CHAIRMAN CAMPSSEN: Judge Nicholson, the
11 Judicial Merit Selection Commission has
12 thoroughly investigated your qualifications
13 for the bench. Our inquiry has focused on
14 nine evaluative criteria and has included a
15 ballot box survey, thorough study of your
16 application materials, verification of your
17 compliance with state ethics laws, search of
18 newspaper articles in which your name appears,
19 study of previous screenings, check for
20 economic conflicts of interest. We have
21 received no affidavits filed in opposition to
22 your election. No witnesses are present to
23 testify. Do you have a brief opening
24 statement you would like to make at this time?

25 JUDGE NICHOLSON: No, sir. I mean, the

1 only thing I've enjoyed working as a judge for
2 the last 17 and a half years and I'd like
3 continue in the future. I can't tell you how
4 long, but I'd like to at least continue.
5 I'm not ready to go home and vegetate
6 completely.

7 CHAIRMAN CAMPSER: Okay. Thank you.
8 Please answer counsel's questions, Judge
9 Nicholson.

10 JUDGE NICHOLSON: Yes, sir.

11 EXAMINATION

12 (By Chief Counsel Brogdon)

13 **Q. Hi, Judge Nicholson. I'm Elizabeth Brogdon.**
14 **Heather Anderson's at a conference so you're stuck**
15 **with me today.**

16 A. Okay.

17 **Q. I hope that's okay.**

18 A. Yes, ma'am. That's fine.

19 **Q. You are being screened for reappointment as a**
20 **retired judge on the Circuit Court bench. Why do**
21 **you want to continue serving as a retired Circuit**
22 **Court judge?**

23 A. As I said earlier, I'm just not ready to completely
24 go home and do nothing. I've enjoyed the work.
25 I've enjoyed working with lawyers, watching lawyers

1 work, and I still enjoy the job. As long as I
2 continue to enjoy it and can do it health-wise, I
3 would like to continue.

4 **Q. Thank you, Judge Nicholson. Although you addressed**
5 **this in your sworn affidavit, could you please**
6 **explain to the members of the Commission what you**
7 **think is the appropriate demeanor for a judge?**

8 A. Appropriate demeanor? Well, I think you got to be
9 fair to people and give an opportunity for
10 everybody to be heard. Obviously, I'm human. I
11 get irritated and I get angry like anybody else.
12 And when you do, I think you need to take time out,
13 go back to chambers, cool off, and then come back
14 and make your decision.

15 **Q. Thank you. Judge Nicholson, how much time do you**
16 **spend per month in your capacity as a retired judge**
17 **and do you wish to alter this workload if you were**
18 **reappointed?**

19 A. I hold court two weeks a month. I do a week of
20 non-jury and a week of either General Session or
21 Common Pleas. On the off two weeks, I probably go
22 in three or four days during that time period to
23 sign orders and do research. The Chief has granted
24 me a -- since I've been doing so much non-jury, I
25 have a law clerk so I have to get with the law

1 clerk on the off weeks. So I would say probably
2 average is two and a half weeks a month.

3 Q. Thank you. Judge Nicholson, the Commission
4 received 453 ballot box surveys regarding you
5 with 36 additional comments. The ballot box
6 survey, for example, contained the following
7 positive comments. It is a pleasure to appear
8 before Judge Nicholson. He is insightful in his
9 questions and careful in his rulings. Judge
10 Nicholson has a well-deserved reputation for being
11 an exemplary jurist and fine gentleman, having a
12 courteous temperament and disposition with equity,
13 with intelligence, fairness, and decency being
14 projected. There was one negative comment that
15 stated that you have been attempting to fix
16 situations by overreaching an interlocutory orders
17 with regard to municipalities. Do you want to
18 comment on that?

19 A. I don't know what municipalities they're talking
20 about. If they're talking about Sergeant Jasper in
21 Charleston, I'm sure somebody feels that way. I
22 don't know how to comment because I don't know what
23 case they're talking about. As Senator Campsen
24 knows, that's a right hot button issue and I got
25 caught up in the middle of it and I issued an Order

1 saying that the -- can't even think of the name of
2 the organization -- not the Zoning Board, but
3 the Architectural Review Board didn't have the
4 authority to deny the petition, if that's what
5 they're talking about.

6 **Q. And they're anonymous, so.**

7 A. So I mean, I don't know how to comment. The only
8 thing I can tell you is this. If I see that
9 there's a problem and it's within my jurisdiction
10 to control or correct, I will try to correct it.
11 Now, having said that, my ability and authority to
12 do that is very limited because I've got to
13 basically rule on the issues that are brought
14 before me by the parties.

15 **Q. Thank you, Judge Nicholson. The only other**
16 **question I have related to the lawsuit that you**
17 **just referenced, unless you want to put any**
18 **additional information about that on the record,**
19 **I'll skip that question.**

20 A. I didn't know about it until two weeks ago.

21 **Q. Okay. Thank you, Judge Nicholson.**

22 MS. BROGDON: I would note that the
23 Lowcountry Citizens Committee found Judge
24 Nicholson qualified in the evaluative criteria
25 of constitutional qualifications, physical

1 health, and mental stability. The Committee
2 found him well qualified in the evaluative
3 criteria of ethical fitness, professional and
4 academic ability, character, reputation,
5 experience, and judicial temperament. I would
6 just note for the record that any concerns
7 raised during the investigation regarding
8 Judge Nicholson were incorporated into the
9 questioning today.

10 Mr. Chairman, I have no further
11 questions.

12 CHAIRMAN CAMPSEN: Thank you. Do any
13 members have questions for Judge Nicholson?

14 SENATOR MALLOY: I just want to just put
15 on the record, Mr. Chairman, that I am
16 involved in a pending matter in front of the
17 Judge and it's good to see you today, Judge.

18 JUDGE NICHOLSON: Thank you.

19 CHAIRMAN CAMPSEN: Thank you. Judge
20 Nicholson, thank you so much. This
21 concludes this portion of your screening
22 process. As you know, the record will remain
23 open until the formal release of the report of
24 qualifications and you may be called back at
25 such time if the need arises. I thank you for

1 your offering and thank you for your service
2 to South Carolina.

3 JUDGE NICHOLSON: Let me say this before
4 I leave. I want to thank y'all for
5 participating in this process. Quite frankly,
6 I think South Carolina has the best process
7 and the best program for electing judges and
8 you've been very successful in your choices
9 over the years. I want to thank you for doing
10 that. I'd also like to thank the civilian
11 members of the Commission for devoting your
12 time and participation in this. I know it's a
13 tough job. I do want thank you for
14 participating in it.

15 CHAIRMAN CAMPSSEN: Thank you, Judge.
16 (Candidate excused.)

17 JUDGE NICHOLSON: Judge Anderson.

18 JUDGE ANDERSON: Yes.

19 CHAIRMAN CAMPSSEN: Thank you for being
20 with us this morning and please raise your
21 right hand.

22 (The Judge is sworn in.)

23 CHAIRMAN CAMPSSEN: Have you had an
24 opportunity to review your personal data
25 questionnaire and sworn statement?

1 JUDGE ANDERSON: I have looked at it
2 briefly standing up here. Yes, sir.

3 CHAIRMAN CAMPSEN: Are they correct?

4 JUDGE ANDERSON: Yes, sir.

5 CHAIRMAN CAMPSEN: Does anything need to
6 be changed?

7 JUDGE ANDERSON: Not that I see, sir.

8 CHAIRMAN CAMPSEN: Do you object to our
9 making these documents and any amendments, if
10 applicable, a part of the record of your sworn
11 testimony?

12 JUDGE ANDERSON: No, sir.

13 CHAIRMAN CAMPSEN: It will be done at
14 this point in the transcript.

15 [EXHIBIT 5, JUDICIAL MERIT SELECTION
16 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
17 HONORABLE GEORGIA V. ANDERSON, ADMITTED.]

18 [EXHIBIT 6, SWORN STATEMENT FOR THE
19 HONORABLE GEORGIA V. ANDERSON, ADMITTED.]

20 CHAIRMAN CAMPSEN: The Judicial Merit
21 Selection Commission has thoroughly
22 investigated your qualifications for the
23 bench. Our inquiry is focused upon
24 nine evaluative criteria and has included a
25 ballot box survey, thorough study of your

1 application materials, verification of your
2 compliance with state ethics laws, search of
3 newspaper articles in which your name appears,
4 study of previous screenings, check for
5 economic conflicts of interest. We have
6 received no affidavits filed in opposition to
7 your election. No witnesses are present to
8 testify. Do you have a brief opening
9 statement you would like to make at this time?

10 JUDGE ANDERSON: No, sir, just than to
11 say I appreciate the opportunity to have
12 served South Carolina in the past as an active
13 family court judge. I have served several
14 years on a regular basis as an active retired
15 judge. I've not done very much in the last
16 two years, but I would hope that maybe in the
17 future I could continue to serve in that
18 capacity and thank you for the opportunity to
19 be here.

20 CHAIRMAN CAMPSER: Thank you. Please
21 answer counsel's questions.

22 EXAMINATION

23 (By Chief Counsel Brogdon)

24 **Q. Hi, Judge Anderson. I'm Elizabeth Brogdon.**
25 **Heather Anderson was your screening attorney, but**

1 she couldn't be here. So I'll be questioning you
2 today. You are being screened for reappointment as
3 a retired judge on the Family Court bench. Why do
4 you want to continue serving as a retired Family
5 Court Judge?

6 A. I am appreciative of the opportunities that I've
7 been given to serve the state of South Carolina and
8 I've kind of looked at serving as an active retired
9 judge as, basically, a way to help repay -- to give
10 back to the community and to help others because we
11 do it, you know, without pay. It's just an
12 opportunity, best I see it, to give back to the
13 community and to continue to serve.

14 Q. Thank you, Judge Anderson. Although you addressed
15 this in your sworn affidavit, could you please
16 explain to the members of the Commission what you
17 think is the appropriate demeanor for a judge?

18 A. Well, first of all, I think a judge needs to be
19 courteous to litigants. I think they need to
20 listen, to pay attention to what's said, to
21 consider all positions, and most of all, to be
22 patient. Sometimes, that's the most difficult
23 think of all.

24 Q. Thank you. Judge Anderson, how much time do you
25 spend per month in your capacity as a retired

1 judge and do you wish to alter this workload if you
2 are reappointed?

3 A. Well, as I said, I haven't served much in the last
4 two years. That's because I have been helping my
5 two daughters with grandchildren and that was
6 something I looked forward to doing as well,
7 but the four years before that, I served pretty
8 actively at least one week a month, sometimes more.
9 I would hope that, as these children which we
10 anticipate will go into daycare when they get of an
11 appropriate age, I would like to do it maybe once a
12 week -- once a month -- one week a month.

13 Q. Thank you. Judge Anderson, the Commission received
14 205 ballot box surveys regarding you with 15
15 additional comments. The ballot box survey,
16 for example, contained the following positive
17 comments. Judge Anderson remains one of the most
18 respected jurists on the Family Court bench. We
19 would be very fortunate to continue to benefit from
20 Judge Anderson's expertise in the Family Court.
21 Six of the written comments expressed some concern.
22 One concern raised deals with preparation for
23 hearings, including a perceived failure to read
24 affidavits at temporary hearings. Would you like
25 to offer a response to this comment?

1 A. Well, first of all, I don't think you can really
2 prepare much prior to going into a hearing unless
3 you know it is one that you are expected to read a
4 lot of material prior to going into it. Motion
5 hearings are one of the most difficult things we
6 do because we're working on a short time frame and
7 they are base rulings on the affidavits as well as
8 comments of counsel. It was my practice if I did
9 not have an opportunity to read affidavits that I
10 thought were important or pertinent to what was
11 being -- the relief being sought, I would take
12 matters under advisement. It was not unusual for
13 me to take a matter under advisement so that I
14 could read all the affidavits. But a lot of
15 times when you go through affidavits, you learn to
16 speed read a little bit, and very often they are
17 carbon copies, they just change the names. But I
18 would read information. If I didn't have time
19 to do it in the 15 minutes allotted for the
20 hearing, I would take it under advisement and issue
21 a ruling later.

22 **Q. Thank you, Judge Anderson. Another comment raised**
23 **a concern regarding unpredictable rulings**
24 **including granting a relief that was not sought by**
25 **the parties in their respective pleadings. What**

1 **response would you offer to this concern?**

2 A. First, I don't think you're necessarily supposed to
3 be predictable. I think each case needs to be
4 judged on the facts put in front of you. There
5 were times, I'm sure, when I did not grant some of
6 the relief that was requested. Most likely, in my
7 recollections and we're going back a lot of years,
8 that probably had to do where children were
9 concerned, where based upon what I saw in the
10 courtroom, what I heard, the relief that the two
11 parties were seeking just was not going to be
12 appropriate in my opinion for the best interest of
13 the children. Other than that, I can't recall any
14 times when I really didn't address relief that was
15 requested.

16 **Q. Thank you. Another concern raised is the**
17 **perception that -- for not to have a full docket**
18 **and prefer agency matters or uncontested matters.**
19 **Do you want to comment on that?**

20 A. The only time that did happen was I was holding
21 court in Horry County on a real regular basis for
22 several years after I retired and I did -- first of
23 all, as a retired judge, we do not have any back-
24 up or secretarial staff; we have to do everything.
25 And I talked with the judges there and I said "I'd

1 be glad to take -- or I would prefer not to do the
2 long contested cases." And that was why, because I
3 didn't have back-up or support staff. So I did
4 mostly do agency cases and a lot of the shorter
5 hearings. Now, that did not happen very long
6 because judges came to me and said "Look, you're
7 catching the longer workdays because contested
8 cases are settling. Would you like to go back?"
9 And I said "Fine, whatever works for you." And
10 along the same line, I also accepted some very
11 contested cases that took more than a day -- that
12 were numerous days and I did those.

13 **Q. Thank you, Judge Anderson.**

14 MS. BROGDON: I would note that the
15 Upstate Citizens Committee found Judge
16 Anderson qualified in the evaluative criteria
17 of constitutional qualifications,
18 physical health, and mental stability.
19 The Committee found her well qualified in the
20 evaluative criteria of ethical fitness,
21 professional and academic ability, character,
22 reputation, experience, and judicial
23 temperament. I would note for the record that
24 any concerns raised during the investigation
25 regarding Judge Anderson were incorporated

1 into the questioning today.

2 Mr. Chairman, I have no further
3 questions.

4 CHAIRMAN CAMPSSEN: Thank you, Ms.
5 Brogdon. Judge Anderson, thank you.
6 This concludes this portion of the screening
7 process. As you know, the record will remain
8 open until the formal release of the report of
9 qualifications and you may be called back at
10 such time if the need arises. I thank you for
11 your offering and thank you for your service
12 to the state of South Carolina.

13 JUDGE ANDERSON: Thank you, Mr. Chairman.

14 CHAIRMAN CAMPSSEN: Thank you.

15 (Candidate excused.)

16 CHAIRMAN CAMPSSEN: Judge Armstrong,
17 welcome.

18 JUDGE ARMSTRONG: Thank you.

19 CHAIRMAN CAMPSSEN: Please raise your
20 right hand.

21 (The Judge was sworn in.)

22 CHAIRMAN CAMPSSEN: Have you had an
23 opportunity to review your personal data
24 questionnaire and sworn statement?

25 JUDGE ARMSTRONG: Yes, sir.

1 CHAIRMAN CAMPSEN: Are they correct?

2 JUDGE ARMSTRONG: Yes, sir.

3 CHAIRMAN CAMPSEN: Does anything need to
4 be changed?

5 JUDGE ARMSTRONG: No, sir.

6 CHAIRMAN CAMPSEN: Do you object to our
7 making these documents and any amendments, if
8 applicable, a part of the record of your sworn
9 testimony?

10 JUDGE ARMSTRONG: No, sir.

11 CHAIRMAN CAMPSEN: It will be done at
12 this point in the transcript.

13 [EXHIBIT 7, JUDICIAL MERIT SELECTION
14 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
15 HONORABLE ROBERT S. ARMSTRONG, ADMITTED.]

16 [EXHIBIT 8, SWORN STATEMENT FOR THE
17 HONORABLE ROBERT S. ARMSTRONG, ADMITTED.]

18 CHAIRMAN CAMPSEN: The Judicial Merit
19 Selection Commission has thoroughly
20 investigated your qualifications for the
21 bench. Our inquiry is focused on nine
22 evaluative criteria and has included a ballot
23 box survey, thorough study of your application
24 materials, verification of your compliance
25 with state ethics laws, search of newspaper

1 articles in which your name appears, study of
2 previous screenings, a check for economic
3 conflicts of interest. We've received no
4 affidavits filed in opposition to your
5 election. No witnesses are present to
6 testify. Do you have a brief opening
7 statement you would like to make at this time?

8 JUDGE ARMSTRONG: No, sir.

9 CHAIRMAN CAMPSER: Very good. Please
10 answer counsel's questions.

11 EXAMINATION

12 (By Chief Counsel Brogdon)

13 **Q. Hi, Judge Armstrong.**

14 **A. Hey. How are you?**

15 **Q. I'm Elizabeth Brogdon. Heather Anderson was your**
16 **screening attorney, but she couldn't be here so you**
17 **get me today.**

18 **A. All right.**

19 **Q. You are being screened for reappointment as a**
20 **retired judge on the family court bench. Why do**
21 **you want to continue serving as a family court**
22 **judge?**

23 **A. I think after about 18 years, I'm finally getting**
24 **the hang of it, so.**

25 **Q. Fair enough. Judge Anderson, although you**

1 **addressed this in your sworn affidavit, could you**
2 **please explain to the members of the Commission**
3 **what you think is the appropriate demeanor for a**
4 **judge?**

5 **A. Try to be even keeled, levelheaded, you know, treat**
6 **everybody with fairness and respect kind of like**
7 **you'd like to be treated.**

8 **Q. Thank you. Judge Armstrong, how much time do**
9 **you spend per month in your capacity as a retired**
10 **judge and do you wish to alter this workload if**
11 **reappointed?**

12 **A. I don't know. Right now, I've been doing two --**
13 **well, four weeks a year. So two weeks -- what we**
14 **call a semester every six months. I've been doing**
15 **two weeks per six months. I've been filling in**
16 **some for people. When judges get sick sometimes**
17 **I'll -- or have to do something, I'll fill in, but**
18 **I debate -- I go back and forth whether I want to**
19 **do more or I like the way it is, so I don't know.**

20 **Q. Judge Armstrong, the Commission received 180 ballot**
21 **box surveys regarding you with ten additional**
22 **comments. The ballot box survey contained**
23 **the following positive comments. A fine judge,**
24 **gentleman, and lawyer, expects lawyers to be**
25 **prepared, smart, evenhanded, decisive, he knows the**

1 law quite well. One written comment expressed the
2 following concern. That you could be impatient and
3 discourteous at times. Do you want to offer a
4 response to that comment?

5 A. I try not to be. I hope I'm never rude and
6 discourteous to anybody. You know, I always treat
7 -- try to realize, you know, the litigants who come
8 before me, even if I've heard 100 cases, you know,
9 that day or a week or whatever, it's the most
10 important case to them. So I always try to treat
11 everybody with courtesy and respect. You know, I
12 do expect people to be on time and I try to run my
13 courtroom on time. So if making people, you know,
14 actually be on time is impatient then maybe I am
15 impatient, but I hold them to the -- you know, I do
16 hold them to the schedule.

17 Q. Thank you, Judge Armstrong.

18 MS. BROGDON: I would note that the
19 Lowcountry Citizens Committee found Judge
20 Armstrong qualified in the evaluative criteria
21 of constitutional qualifications, physical
22 health, and mental stability. The Committee
23 found him well qualified in the evaluative
24 criteria of ethical fitness, professional and
25 academic ability, character, reputation,

1 experience, and judicial temperament. I would
2 note for the record that any concerns raised
3 during the investigation regarding Judge
4 Armstrong were incorporated into the
5 questioning today.

6 Mr. Chairman, I have no further
7 questions.

8 CHAIRMAN CAMPSSEN: Judge Armstrong, thank
9 you so much. This concludes this portion of
10 our screening process. As you know, the
11 record will remain open until the formal
12 release of the report of qualifications and
13 you may be called back at such time if the
14 need arises. I thank you for offering and
15 thank you for your service to South Carolina.

16 JUDGE ARMSTRONG: Thank you.

17 (Candidate excused.)

18 CHAIRMAN CAMPSSEN: Judge Riddle, welcome
19 and please raise your right hand.

20 (The Judge is sworn in.)

21 CHAIRMAN CAMPSSEN: Have you had an
22 opportunity to review your personal data
23 questionnaire and sworn statement?

24 JUDGE RIDDLE: Yes.

25 CHAIRMAN CAMPSSEN: Are they correct?

1 JUDGE RIDDLE: Yes.

2 CHAIRMAN CAMPSER: Does anything need to
3 be changed?

4 JUDGE RIDDLE: No.

5 CHAIRMAN CAMPSER: Do you object to our
6 making these documents and any amendments, if
7 applicable, a part of the record of your sworn
8 testimony?

9 JUDGE RIDDLE: No.

10 CHAIRMAN CAMPSER: It will be done at
11 this point in the transcript.

12 [EXHIBIT 9, JUDICIAL MERIT SELECTION
13 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
14 HONORABLE LESLIE KIRKLAND RIDDLE, ADMITTED.]

15 [EXHIBIT 10, SWORN STATEMENT FOR THE
16 HONORABLE LESLIE KIRKLAND RIDDLE, ADMITTED.]

17 CHAIRMAN CAMPSER: The Judicial
18 Merit Selection Commission has thoroughly
19 investigated your qualifications for the
20 bench. Our inquiry is focused on nine
21 evaluative criteria and has included a ballot
22 box survey, a thorough study of your
23 application materials, verification of your
24 compliance with state ethics laws, search of
25 newspaper articles in which your name appears,

1 study of previous screenings, check for
2 economic conflicts of interest. We've
3 received no affidavits filed in opposition to
4 your election and no witnesses are present to
5 testify. Do you have a brief opening
6 statement you would like to make at this time?

7 JUDGE RIDDLE: Not unless you want me to.
8 I'm good.

9 CHAIRMAN CAMPSSEN: Brevity is clarity.
10 We like that.

11 JUDGE RIDDLE: It's hard for me.

12 CHAIRMAN CAMPSSEN: Please answer
13 counsel's questions.

14 EXAMINATION

15 (By Ms. Wells)

16 **Q. Thank you, Judge Riddle. As you know, you're being**
17 **screened for reappointment as a retired judge on**
18 **the family court bench. Could you briefly explain**
19 **why you would like to continue serving as a retired**
20 **family court judge?**

21 **A. One, I like to help people that have sick family**
22 **members and I volunteer to cover for them. And the**
23 **others, one day I'm going to get to go back to do**
24 **my juvenile delinquents and I'm holding my breath**
25 **for that day when I can just do them.**

1 Q. You addressed this in your sworn statement. Would
2 you please explain to the members of the Commission
3 what you think is the appropriate demeanor of a
4 family court judge?

5 A. To be fair, to listen, and I believe to try to the
6 kind of judge that I would want to appear in front
7 of and thoughtful.

8 Q. Thank you. How much time approximately would you
9 say you spend per month serving as a retired family
10 court judge and would you like to alter that
11 schedule in the future?

12 A. I've held court seven days in four years. I did it
13 mainly whenever there were other judges that had
14 sick family members or had conflicts and
15 I volunteered on those days. I would potentially,
16 down the road, like to volunteer my time to hear
17 juvenile delinquent cases. I mean, I will tell you
18 those were my -- that was my passion. I think you
19 could ask Representative Rutherford how I feel
20 about children and fixing them.

21 Q. Thank you, your Honor. Judge Riddle, would
22 you like to comment to the Commission about the
23 fact that you do not -- why do you not accept
24 expenses or per diem while you're serving?

25 A. Because it's kind of my service back to the

1 citizens of South Carolina and I have yet to send a
2 bill for any per diem's when I held court and it's
3 a lot of trouble to get reimbursement, too.

4 **Q. Judge Riddle, the Commission received 455 ballot**
5 **box surveys regarding you with 30 additional**
6 **comments.**

7 A. That's scary.

8 **Q. But they contained the following positive comments.**
9 **Judge Riddle makes decisions in a professional and**
10 **fair manner, she has a strong ethical sense and a**
11 **great judicial temperament with attorneys and**
12 **litigants. Three, however, of the written comments**
13 **expressed concerns. Two comments indicated that**
14 **you were bossy and lacked good judicial temperament**
15 **and a third comment stated that you lacked**
16 **professionalism and failed to set appropriate**
17 **boundaries with litigants. Could you explain**
18 **to the Commission your response that you would**
19 **offer to these comments?**

20 A. Okay. One, I can tell you that I try and I've
21 tried for now 21 years to always come across as
22 fair and professional and really tried to hold
23 court like I want to be in front of if I was. You
24 know, I'm a work in progress. There are going to
25 be times whenever you're under the stresses that

1 family court judges have -- 4,000 a year is what
2 they estimated the last time I heard. There are
3 going to be times probably where you might get
4 maybe short-tempered. I don't think that has
5 happened very often with me, but I am not perfect.
6 I think you could probably call my husband and he
7 would tell you there are occasions when I'm bossy,
8 but he tells me I don't wear a robe at home.
9 Anyway, but I try really hard to be the kind of
10 judge you would want to appear in front of and I'll
11 continue to try to do that.

12 **Q. Thank you.**

13 MS. WELLS: Members of the Commission, I
14 would note that the Midlands Citizens
15 Committee found Judge Riddle to be qualified
16 as to constitutional qualifications, physical
17 health, and mental stability. The Midlands
18 Citizens Committee found Judge Riddle to be
19 well qualified as to ethical fitness,
20 professional and academic ability, character,
21 reputation, experience, and judicial
22 temperament. The Committee commented Judge
23 Riddle impressed this Committee in every way.
24 She has clearly been called to the Family
25 Court bench. She also shows her dedication

1 and devotion to duty by serving as a
2 substitute judge at no cost to the state of
3 South Carolina. The Committee also stated in
4 summary, Judge Riddle is exceptional in every
5 way and serves the Family Court bench with
6 distinction.

7 Mr. Chairman, I would note for the record
8 that any concerns raised during the
9 investigation considering Judge Riddle
10 were incorporated into the questioning of her
11 today and I have no further questions.

12 CHAIRMAN CAMPSSEN: Thank you. I have one
13 question, Judge. If you are serving without
14 compensation, why have we only used you four
15 times?

16 JUDGE RIDDLE: Seven.

17 CHAIRMAN CAMPSSEN: Seven times. Seven
18 times.

19 JUDGE RIDDLE: Well, I do a lot of
20 mediation, which takes up a lot of my time,
21 but if you could convince somebody that I
22 could just do juvenile delinquents, like once
23 a week, I would go back and I would run so
24 hard to get on that bench that you would have
25 a hard time and I would knock you down

1 probably in the process to get there. Those
2 kids, I miss them. That's about the only time
3 you see me miss holding court is making a
4 difference with them.

5 CHAIRMAN CAMPSER: Well, thank you for
6 your service. You obviously have a sincere
7 passion for serving. Representative
8 Rutherford.

9 JUDGE RIDDLE: Oh, no. Oh, no.

10 REPRESENTATIVE RUTHERFORD: Mr. Chairman,
11 thank you. I've been practicing law almost 20
12 years now and 17 of which was in front of
13 Judge Riddle and she is by far one of the best
14 Family Court Judges that we've had. We are
15 kind of laughing back and forth because when
16 she has a juvenile in front of her, it is
17 going to be as much time as she feels she
18 needs to dedicate to talk to that juvenile to
19 try and make it better. It doesn't matter
20 who's waiting, it's going to be what are they
21 doing in school, what are they doing after
22 school, have they talked about wrestling, have
23 they talked to the wrestling coach --

24 JUDGE RIDDLE: I recruit for the high
25 school teams, wrestling. I can pick your

1 weight. I can probably, if you stood up, tell
2 you how much you weigh.

3 REPRESENTATIVE RUTHERFORD: This is what
4 goes on day in and day out in her courtroom
5 until she retired. So Judge, thank you for
6 all that you do. We appreciate it.

7 JUDGE RIDDLE: I do miss Todd. You could
8 hear him down the hall.

9 CHAIRMAN CAMPSSEN: Well, if you have a
10 talent convincing juveniles, perhaps you ought
11 to come mediate some of the negotiations
12 between the House and the Senate and help us
13 get --

14 JUDGE RIDDLE: You know, if you call me
15 up, I might do it. I mean, and I can throw
16 you -- I can put a ring around it and we can
17 have gloves and, you know, I would be --
18 listen, you need me, I'm there for you.

19 CHAIRMAN CAMPSSEN: Senator Hembree has a
20 question.

21 SENATOR HEMBREE: Mr. Chairman, thank
22 you. I've got to disclose to this committee
23 that I roomed with Dayton Riddle in law school
24 and I roomed with him when he met Leslie --
25 Judge Riddle, and they began dating and so --

1 JUDGE RIDDLE: I got engaged with Greg
2 and Renee. We were all together.

3 SENATOR HEMBREE: Yes, all four kind of
4 at the same time and so --

5 JUDGE RIDDLE: I know more than he
6 wants me to tell.

7 SENATOR HEMBREE: This is where I'm
8 leading up to, Chairman. I have no questions
9 for Judge Riddle because of the wealth of
10 information that she has that she could share
11 about one of the members of this Commission
12 with the public and others, so with that, I
13 will yield -- bounce my time to anybody else.

14 CHAIRMAN CAMPSSEN: A lot of questions
15 just came to my mind I'd like to ask after
16 this.

17 JUDGE RIDDLE: I want to say it, but
18 Katherine Wells would kill me.

19 CHAIRMAN CAMPSSEN: Any other questions,
20 comments?

21 (No response.)

22 CHAIRMAN CAMPSSEN: Judge Riddle, thank
23 you so much. This concludes this portion of
24 your screening process. As you know, the
25 record will remain open until the formal

1 release of the report of qualifications and
2 you may be called back in such time if the
3 need arises. I thank you for offering and I
4 thank you for your service to South Carolina
5 at no charge.

6 JUDGE RIDDLE: Well, you know, one day I
7 may charge, but I'm just going to tell you if
8 y'all need me, I will help y'all up here, but
9 not as a legislator.

10 CHAIRMAN CAMPSSEN: We need something for
11 sure.

12 JUDGE RIDDLE: Well, I know.

13 CHAIRMAN CAMPSSEN: Thank you.

14 (Candidate excused.)

15 CHAIRMAN CAMPSSEN: Judge Woods, welcome.

16 JUDGE WOODS: Thank you, sir.

17 CHAIRMAN CAMPSSEN: Please raise your
18 right hand.

19 (The Judge is sworn in.)

20 CHAIRMAN CAMPSSEN: Have you had an
21 opportunity to review your personal data
22 questionnaire and sworn statement?

23 JUDGE WOODS: Yes, sir.

24 CHAIRMAN CAMPSSEN: Are they correct?

25 JUDGE WOODS: Yes, sir.

1 CHAIRMAN CAMPSEN: Does anything need to
2 be changed?

3 JUDGE WOODS: Not to my knowledge.

4 CHAIRMAN CAMPSEN: Do you object to our
5 making these documents and any amendments, if
6 applicable, a part of the record of your sworn
7 testimony?

8 JUDGE WOODS: No, I do not.

9 CHAIRMAN CAMPSEN: It will be done at
10 this point in the transcript.

11 [EXHIBIT 11, JUDICIAL MERIT SELECTION
12 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
13 HONORABLE HENRY T. WOODS, ADMITTED.]

14 [EXHIBIT 12, SWORN STATEMENT FOR THE
15 HONORABLE HENRY T. WOODS, ADMITTED.]

16 CHAIRMAN CAMPSEN: The Judicial Merit
17 Selection Commission has thoroughly
18 investigated your qualifications for the
19 bench. Our inquiry is focused on nine
20 evaluative criteria and has included a
21 ballot box survey, thorough study of your
22 application materials, verification of your
23 compliance with state ethics laws, search of
24 newspaper articles in which your name appears,
25 study of previous screenings, check for

1 economic conflicts of interest. We have
2 received no affidavits filed in opposition to
3 your election. No witnesses are present to
4 testify. Do you have a brief opening
5 statement you would like to make at this time?

6 JUDGE WOODS: Well, I have made this
7 statement before on February the 4th, 1999. I
8 died and went and to heaven when I was elected
9 to my position. I thoroughly enjoyed my time
10 on the bench and thoroughly enjoyed my time as
11 a retired judge.

12 CHAIRMAN CAMPSEN: Thank you. Please
13 answer counsel's questions.

14 EXAMINATION

15 (By Ms. Wells)

16 **Q. Thank you. Judge, as you know, you're being**
17 **screened for reappointment as a retired judge on**
18 **the Family Court bench. Would you explain to the**
19 **Commission why you would like to continue serving**
20 **as a retired Family Court judge?**

21 **A. Three reasons. One, I still enjoy what I'm doing.**
22 **Number 2, it allows me to make a difference in**
23 **kids' lives. And my wife says I want to do**
24 **it because that's the only place I can go where**
25 **everybody stands up and says "yes, sir."**

1 **Q. Thank you. You addressed this in your sworn**
2 **statement. Would you please explain to the members**
3 **of the Commission what you think is the appropriate**
4 **demeanor of a family court judge?**

5 A. Well, you need to control your courtroom. Having
6 said that, though, you don't have to be stern. You
7 can welcome people to the courtroom. What we do is
8 so involved in people's lives. I think the court,
9 especially the Family Court, needs to take into
10 consideration the needs of the people coming in
11 front of you. It's the most traumatic thing
12 they'll ever go through. We're talking about doing
13 away with their rights as parents. We're talking
14 about their children. So my view is you try to be
15 as nice as you can while still keeping control of
16 your court. My daddy told me years ago nobody was
17 ever being hurt by being nice to.

18 **Q. Thank you. How much time would you say that you**
19 **spend each month in your capacity as a retired**
20 **judge and would you wish to alter this workload if**
21 **you are reappointed as a retired judge?**

22 A. Well, for September, October, November, I'm an
23 active judge so I hold court three weeks a month
24 during those weeks. And then as Tiffany needs me,
25 I fill in for other judges during the rest of the

1 year. So I've spent as much time as a week filling
2 in for another judge and sometimes I've spent a
3 day. It just depends on the need. I like my
4 schedule the way it is now. It suits my schedule
5 and let's me plan for other things. It gives me
6 time to do other things, but it keeps me actively
7 involved in the system which, as I stated, I still
8 thoroughly enjoy.

9 **Q. Thank you, Judge Woods. The Commission received**
10 **317 ballot box surveys regarding you with 15**
11 **additional comments. The ballot box survey, for**
12 **example, contained the following positive comments.**
13 **Judge Woods is fair and has the respect of his**
14 **peers and the legal community, he is very**
15 **knowledgeable about the law and he serves well on**
16 **the bench. Three of the written comments expressed**
17 **concern. One individual response expressed concern**
18 **with Judge Woods unwillingness to hold someone in**
19 **contemp of court for violating a court order.**
20 **Judge Woods, what response do you offer to this**
21 **concern?**

22 **A.** Well, contempt is the most powerful thing we
23 have so I look at every single case. Contempt is
24 not punishment. Contempt is to make sure the
25 people comply with the orders of the court. If you

1 can find a way for people to purge themselves
2 of contempt or a way for them to comply with the
3 court order then you should try that. Putting
4 people in jail for 30 days normally doesn't do
5 anything but mess up their lives or the lives of
6 their families. So typically, somebody who's in
7 for child support violation and they just got out
8 of a sentence where they've been sentenced and they
9 did six months and they didn't pay anything during
10 the six months, why am I going to send them back to
11 jail for another six months? That costs the
12 taxpayers tons of money. So, you know, what I try
13 to do is figure out a way for them to be productive
14 and pay money. So I look at every single case. I
15 do not have a robe thing where you appear in front
16 of me, you get this sentence on every case. I
17 try to look at every case individual. So I'm not
18 sure where that came from, but I think contempt
19 power is to be used judiciously.

20 **Q. Thank you. A second negative response indicated**
21 **that you are lazy, slow, and do not possess**
22 **the legal knowledge. What response do you offer to**
23 **this concern?**

24 A. I have no idea. I'm going to Conway this
25 afternoon, and I was there last time, we were able

1 to move a number of DSS cases so they had to be
2 scheduled for two full days of abuse and neglect.
3 I came to Lexington, got rid of 14 cases in one
4 day. So nobody's ever accused me of not staying on
5 the bench long enough to dispose of cases. So I
6 have no idea where that came from.

7 **Q. And the third and final negative individual**
8 **response indicated that you're unpredictable and do**
9 **not follow procedure. This individual response**
10 **noted that Judge Woods had said that since he's**
11 **retired, he doesn't have to follow the same rules**
12 **as other judges. What response would you offer to**
13 **this concern?**

14 A. That was a mistake I made about three years ago
15 in Charleston. We were kind of joking around. I
16 didn't realize the person was going to take it
17 seriously. I was trying to dispose of a case that
18 needed some things done to make it work. I have
19 never, to my knowledge, violated any procedural
20 act. I do bend it as far as I can to try to move
21 cases. If you're trying to help a child, sometimes
22 you have to be innovative if you're trying to do
23 something or you're trying to get parents to
24 agree on a plan that benefits their children and
25 get rid of the negative part about -- children are

1 the victims in cases, especially divorce cases
2 where the people are still fighting 15 years later
3 over who owns the child. Nobody owns the child and
4 sometimes I will say "I own the child." I mean,
5 that's what a Family Court judge does is try to
6 make sure the child has the best chance of success.
7 I'm not trying to reward a parent. I'm trying to
8 fix these kids a role in the family.

9 **Q. Thank you.**

10 **A.** I did say that. That was a mistake. I didn't
11 realize they were going take it personally.

12 MS. WELLS: Members of the Commission, I
13 would note that the Piedmont Citizens
14 Committee found Judge Woods to be qualified as
15 to constitutional qualifications, physical
16 health, and mental health. The Piedmont
17 Citizens Committee found Judge Woods to be
18 well qualified as to ethical fitness,
19 professionalism, and academic ability,
20 character, reputation, physical health,
21 experience, and judicial temperament. The
22 Committee stated, in summary, Judge Woods has
23 a well-earned reputation as an experienced,
24 compassionate, and insightful Family Court
25 Judge. The Committee appreciates his

1 willingness to continue serving following his
2 retirement. I would note for the record
3 that any concerns raised during the
4 investigation regarding Judge Woods was
5 incorporated into his questioning today.

6 Mr. Chairman, I have no further
7 questions.

8 CHAIRMAN CAMPSEN: Thank you. Judge
9 Woods, thank you so much. This concludes this
10 portion of the screening process. As you
11 know, the record will remain open until the
12 formal release of the report of qualifications
13 and you may be called back at any such time if
14 the need arises. I thank you for offering and
15 I thank you for your service to the state of
16 South Carolina.

17 JUDGE WOODS: Thank you, sir. I
18 appreciate it.

19 (Candidate excused.)

20 CHAIRMAN CAMPSEN: That finishes the
21 portion of the agenda whereby we're dealing
22 with active retired judges and therefore I
23 would move we go into executive session at
24 this point.

25 REPRESENTATIVE RUTHERFORD: Second.

1 CHAIRMAN CAMPSSEN: I have a second. Any
2 discussion?

3 (No response.)

4 CHAIRMAN CAMPSSEN: There will be no
5 discussion. We'll move immediately to a vote.
6 All in favor, indicate by saying "aye."

7 BOARD MEMBERS: "Aye."

8 CHAIRMAN CAMPSSEN: Opposed?

9 (No response.)

10 CHAIRMAN CAMPSSEN: The ayes have it.
11 Thank you. Please clear the room and everyone
12 turn their microphones off.

13 (Off-the-record executive session.)

14 CHAIRMAN CAMPSSEN: Thank you, ladies and
15 gentlemen. The Judicial Merit Selection
16 Commission is now back on the record. For the
17 record, I would like to state that we have
18 been in executive session, however, no
19 decisions were made, no votes were taken
20 during executive session. Now, it's time to
21 vote on the active judges and we can vote for
22 them or against them in mass or we can do it
23 individually.

24 REPRESENTATIVE BANNISTER: Let's do it
25 all together.

1 MR. HITCHCOCK: Second.

2 CHAIRMAN CAMPSSEN: Okay. We have a
3 motion to do it in mass together. We have a
4 second. Any discussion?

5 (No response.)

6 CHAIRMAN CAMPSSEN: Being no discussion,
7 we'll move immediately to a vote. All those
8 in favor of voting for the active retired
9 judges to be found qualified and nominated --
10 just qualified, say "aye."

11 BOARD MEMBERS: "Aye."

12 CHAIRMAN CAMPSSEN: Opposed?

13 (No response.)

14 CHAIRMAN CAMPSSEN: The ayes have it.
15 And staff will hand out the sheet whereby --
16 or is it in the book? Is it in our book?

17 MS. BELL: Behind Tab G.

18 CHAIRMAN CAMPSSEN: G -- behind Tab G.
19 You want to take them out. And here, its just
20 qualify or not qualify are the two options for
21 this. We will now go off the record and break
22 for lunch.

23 (Off the record.)

24 CHAIRMAN CAMPSSEN: Okay. The Commission
25 is reconvened and would like to ask staff --

1 well, I see Judge Anderson here, before us, so
2 that's great. I'd like to note for the record
3 that all active retired judges were found
4 qualified prior to the lunch break, for the
5 record.

6 Judge Anderson, welcome.

7 JUDGE ANDERSON: Thank you.

8 CHAIRMAN CAMPSER: Please raise your
9 right hand.

10 (The Judge was sworn.)

11 CHAIRMAN CAMPSER: Have you had an
12 opportunity to review your personal data
13 questionnaire and sworn statement?

14 JUDGE ANDERSON: Yes, sir.

15 CHAIRMAN CAMPSER: Are they correct?

16 JUDGE ANDERSON: Yes, sir.

17 CHAIRMAN CAMPSER: Does anything need to
18 be changed?

19 JUDGE ANDERSON: No, sir.

20 CHAIRMAN CAMPSER: Do you object to our
21 making these documents and any amendments, if
22 applicable, part of the record of your sworn
23 testimony?

24 JUDGE ANDERSON: No, sir.

25 CHAIRMAN CAMPSER: It will be done at

1 this point in the transcript.

2 [EXHIBIT 13, JUDICIAL MERIT SELECTION
3 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR
4 THE HONORABLE RALPH K. ANDERSON, III,
5 ADMITTED.]

6 [EXHIBIT 14, SWORN STATEMENT FOR THE
7 HONORABLE RALPH K. ANDERSON, III, ADMITTED.]

8 CHAIRMAN CAMPSER: The Judicial Merit
9 Selection Commission has thoroughly
10 investigated your qualifications for the
11 bench. Our inquiry is focused on nine
12 evaluated criteria and has included a ballot
13 box survey, thorough study of your application
14 materials, verification of your compliance
15 with state ethics laws, search of newspaper
16 articles in which your name appears, study of
17 previous screenings, check for economic
18 conflicts of interest. We have received no
19 affidavits filed in opposition to your
20 election. No witnesses are present to
21 testify. Do you have a brief opening
22 statement you would like to make at this time?

23 JUDGE ANDERSON: No, sir.

24 CHAIRMAN CAMPSER: Okay. Please answer
25 counsel's questions.

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EXAMINATION

(By Chief Counsel Brogdon)

Q. Hi, Judge Anderson. How are you?

A. Hello.

MS. BROGDON: I would note for the record that based on the testimony contained in the candidates PDQ, which has been included in the record with Judge Anderson's permission, he meets the constitutional and/or statutory requirements for this position regarding age, residence, and years of practice.

Q. Judge Anderson, why do you now want to serve as a justice on the Supreme Court?

A. Well, as I said last time, I think most every judge would love to be on the highest court of the state and I obviously am no exception. Given that, I recognize the privilege that I'm asking of y'all. And I will say that it's my route to seeking this office is an interesting path.

I started at the Attorney General's office as the Governor's extradition hearing officer. And I always wanted to be a trial lawyer and I had the -- started in Magistrate's Court level because back then a lot of people weren't convinced that being

1 in a wheelchair I could do a great job. But I've
2 worked -- worked my way up and became one of the
3 lead trial lawyers of the Attorney General's office
4 and I loved it. But when I got elected to the
5 Administrative Law Court I wasn't sure I was really
6 going to enjoy it as much with all the trial work.
7 And when I started at the Administrative Law Court
8 the -- we were mostly contested case hearings,
9 which is trial work hearings. But over time we've
10 -- we've become about including the inmate
11 jurisdiction 70 percent of appellate. And I found
12 out that I love appellate law. I think I do a good
13 job at it and I would like to take the next step
14 and I think I bring some -- an interesting
15 viewpoint to the Supreme Court giving my, both
16 criminal law background and administrative law
17 background.

18 **Q. Thank you, Judge Anderson. And you touched on this**
19 **in that answer, that how do you feel your legal and**
20 **professional experience thus far will assist you to**
21 **be an effective Supreme Court Justice in addition**
22 **to what you've already shared?**

23 A. Well, at the Attorney General's office, I, you
24 know, I hear it is not that much that way anymore.
25 I wish it was, but when I was at the Attorney

1 General's office I did a vast array of litigation
2 and representing the state.

3 On the criminal side, I was the statewide
4 criminal prosecutor, as I said. I was the
5 Governor's extradition hearing officer. I did
6 post-conviction relief which is technically a civil
7 but involves criminal proceedings. You gain the
8 knowledge of the defense lawyers and a perspective
9 in those cases.

10 I did some criminal appeals. On the civil
11 side, Mr. Medlock decided to move the criminal
12 prosecution division to the civil division and I
13 came under the tutelage of Ed Evans. From there I
14 tried civil cases with Ed. I represented a -- the
15 Ethics Commission as their counsel. I did
16 Engineering and Land Survey Board prosecution;
17 part-time Medical Board prosecution. I did
18 Attorney General opinions. And I was an Employee
19 Grievance Committee attorney.

20 So I've had a diverse background with the AG's
21 Office and the Administrative Law Court is similar
22 because our court is -- is that of a contested
23 trial. Like I said at the beginning of our -- of
24 our jurisdiction, we were mostly that. Now we've
25 become significantly Appellate. But even with the

1 contested cases, those case are often complex
2 issues. I deal with statutory construction and
3 that background is something that is very conducive
4 to the Supreme Court bench in learning how to
5 review cases through a statutory construction
6 standpoint. And in -- even in the capacity there
7 we had to -- we've got to give findings of fact and
8 support those findings with conclusions of law.
9 I've had a diverse background.

10 **Q. Thank you. Judge Anderson, how would you describe**
11 **your general judicial philosophy?**

12 A. My general judicial philosophy? Work hard, write
13 well-reasoned decisions, and earn the respect of
14 the bench and the bar.

15 **Q. Thank you. Judge Anderson, what is your vision**
16 **for the future of our judicial system and what**
17 **changes would you advocate and why?**

18 A. Vision of judicial system? I want a court that --
19 kind of following over what I just said a while
20 ago. To earn respect. I would like us to have a
21 core system throughout the state where -- where
22 litigants really feel the justice is blind and the
23 court system doesn't care about who -- who
24 represents the parties or who the parties are.

25 As far as my perspective on the future, I

1 think it would be an extension of that. I -- if
2 you got any particulars, I'd ask for that, but I --
3 I -- as the court moves forward in the future, one
4 of the significant changes I see is the
5 implementation of technology. It grants the court
6 and the bar a lot of benefits through technology,
7 but it also brings interesting concerns to -- that
8 we're going to have deal with. A good example
9 would be in the area of discovery, we are now able
10 to -- or lawyers are able to seek discovery
11 concerning a -- emails and -- and the such. Well,
12 that -- that offers a benefit, but it also can
13 overwhelm you. The attorneys and the court system
14 -- it's just those things we're going to have to
15 take a step-by-step approach to deal with.

16 **Q. Thank you. Judge Anderson, to what extent do you**
17 **believe that a judge should or should not defer to**
18 **the actions of the General Assembly?**

19 A. Well, the General Assembly implements the law. The
20 court simply interprets the law. Oh, excuse me,
21 General Assembly enacts the law and the executive
22 branch implements the law and the court simply
23 interprets the law. So the court needs to stay
24 within -- as I've said to many people in the past,
25 stay within our lane. And if you need more

1 specifics on that, I'll follow up on that.

2 **Q.** **Okay. That's fine. Judge Anderson, the Commission**
3 **received 437 ballot box surveys regarding you, with**
4 **64 additional comments. The ballot box survey**
5 **contained the following positive comments. A**
6 **caring, thoughtful, hardworking judge. An**
7 **exceptional individual. A learned jurist and a**
8 **delightful person. He is one of the most**
9 **thoughtful, patient, and fairest jurists I've had**
10 **the pleasure to practice before. And extremely**
11 **well qualified. A student of the law.**

12 **Twelve of the written comments expressed**
13 **concern. One comment indicated concern that you**
14 **lack experience to serve on the South Carolina**
15 **Supreme Court. What response would you offer to**
16 **this concern?**

17 **A.** Well, I've addressed that already. But our court
18 is an excellent training ground for the Supreme
19 Court. As I said, we hear a significant amount of
20 appellate cases now and on top of that even the
21 contested cases have a -- have an appellate type
22 characteristic with them. We have to write
23 findings of fact and defend those findings of fact
24 with conclusions of law.

25 **Q.** **Thank you. Judge Anderson, the second concern**

1 **indicated that you are biased against environmental**
2 **organizations and in favor of the stay. What**
3 **response would you offer to that concern?**

4 A. If you look at my appellate decisions, when I say
5 appellate, the cases of mine that have gone up on
6 appeal, I have -- you would see across the board
7 that I -- I call them like I see them. I have had
8 cases where I've found in favor of DHEC and cases
9 where I've found against DHEC in the appellate
10 arena. And the only concern I have, I wish that
11 the -- some of the environmental cases were better
12 so I could decide in their favor.

13 **Q. Thank you. Judge Anderson, several comments stated**
14 **that you did not treat your litigants and court**
15 **staff properly. What response would you offer for**
16 **this concern?**

17 A. I think I do and -- we just went through a
18 oversight review and I think if that really were a
19 concern, that would have come out during that time
20 frame.

21 **Q. Thank you. And finally, Judge Anderson, another**
22 **concern indicated that you apply the law to reach**
23 **your preordained decisions. Do you want to respond**
24 **to that?**

25 A. I take the opposite approach. I work very hard to

1 research our decisions and my fellow judges often
2 use my decisions to make their own. So I -- I
3 think that, that would be opposite of what I
4 actually do.

5 **Q. Thank you. And, Judge Anderson, your SLED report**
6 **indicated that there was a lawsuit filed against**
7 **you since your last screening. It was filed on May**
8 **10 of 2016, in the Richland County Court of Common**
9 **Pleas by a prisoner named Isaiah James. The SLED**
10 **reports notes that you were never served. Do you**
11 **want to explain the nature or the disposition of**
12 **this lawsuit; if you know?**

13 **A. I -- I was never served. I have no idea about any**
14 **of that case.**

15 **Q. Okay. And your SLED report also indicated another**
16 **lawsuit filed against since your last screening, it**
17 **was also a prisoner civil rights case filed on**
18 **September 19th of 2016, in the US District Court**
19 **for the District of South Carolina by three**
20 **prisoners. I'm going to spell the first name, Y-A-**
21 **H-Y-A, last name M-U-Q-I-T; also Anthony Cook, and**
22 **Lawrence L. Crawford. Do you want to explain the**
23 **nature or disposition of this lawsuit; if you know?**

24 **A. I don't know.**

25 MS. BROGDON: Mr. Chairman, I have no

1 further questions regarding that.

2 Q. A couple of housekeeping issues. Since submitting
3 your letter of intent, have you sought or received
4 the pledge of any legislator either prior to this
5 day or pending the outcome of your screening?

6 A. No.

7 Q. Have you asked any third parties to contact members
8 of the General Assembly on your behalf or are you
9 aware of anyone attempting to intervene in this
10 process on your behalf?

11 A. No.

12 Q. Since submitting your letter of intent to run for
13 this seat, have you contacted any members of the
14 Commission about your candidacy?

15 A. No.

16 Q. And finally, do you understand that you're
17 prohibited from seeking a pledge or commitment
18 directly or indirectly until 48 hours after the
19 formal release of the Commission's report and are
20 you aware of the penalties for violating the
21 pledging rules?

22 A. Yes.

23 MS. BROGDON: I would note that the
24 Midlands Citizens Committee reported that
25 Judge Anderson is well qualified in the

1 evaluative criteria of ethical fitness,
2 professional and academic ability, character,
3 reputation, experience and judicial
4 temperament and qualified in the remaining
5 evaluative criteria of constitutional
6 qualifications, physical health, and mental
7 stability.

8 The Midlands Citizens Committee commented
9 that Judge Anderson is outstanding and
10 exceptionally well qualified in every way to
11 serve as a justice on the South Carolina
12 Supreme Court. He displays an inquisitive
13 and very capable intellect, along with a
14 temperament well suited for the bench. He
15 seems to have a highly developed sense of
16 service and fairness.

17 I would note for the record that any
18 concern raised during the investigation
19 regarding Judge Anderson were incorporated
20 into my questioning today. Mr. Chairman, I
21 have no further questions.

22 CHAIRMAN CAMPSER: Thank you, Ms.
23 Brogdon. Any questions for Judge Anderson?
24 Senator from Horry; Senator Hembree.

25 SENATOR HEMBREE: Thank you, Mr.

1 Chairman.

2 EXAMINATION

3 (By Senator Hembree)

4 **Q. Good afternoon, Judge Anderson.**

5 **A. Good afternoon.**

6 **Q. Just a couple of quick questions. You've touched**
7 **on this about the court staying in its lane as you**
8 **described your judicial philosophy. I would ask**
9 **you kind of to follow-up on that. Are there any**
10 **recent Supreme Court Rulings that give you concern**
11 **regarding separation of powers and a -- maybe a --**
12 **wandering into the role of the executive branch or**
13 **legislative branch by the court.**

14 **A. I don't know if reached a comment on recent Supreme**
15 **Court rulings as far as -- if I comment about the**
16 **accuracy of a ruling, I could be commenting about**
17 **something that may come before me that -- if**
18 **elected. Could we get more --**

19 **Q. Well, if we -- let me back up and you tell me how**
20 **you see your -- what is your view of the separation**
21 **of powers and how it should work in our system here**
22 **in South Carolina?**

23 **A. Well, as I stated last time, I start with Article 1**
24 **Section A of the South Carolina Constitution. It**
25 **says for the government of this state, the**

1 legislative, executive -- executive and judicial
2 powers of the government shall be forever separate
3 and distinct from each other. That's pretty strong
4 language to say whatever separate and distinct from
5 each other.

6 Then it goes on to state that no person or
7 persons exercising the functions of one of the said
8 departments shall assume or discharge the duties of
9 any other. If our judges simply follow the
10 constitution, they will stay within their lane.

11 Now, I say that -- that's strong language but as
12 with anything dealing with the court system you do
13 have to deal with the definition of what is
14 judicial discretion. And -- and, I think --
15 especially with me, if you look at my history on
16 the court I have a rich history of, as I said,
17 staying within my lane of employing judicial
18 discretion and the decisions I issue. And our
19 court gives us a vast opportunity to veer from,
20 given all the statutory instructions --
21 considerations that we have. But I have on
22 numerous occasions deferred to the authority of the
23 General Assembly, rather than expand the authority
24 of my court.

25 **Q. And you sort of touched on this, but I want to**

1 follow with something else -- another question was
2 asked you about, what are -- do you have any
3 opinion or see any issues that are facing the
4 judicial branch or the -- or the bar and sort of
5 the court system as a whole, whether it be on the
6 judicial side or within the legal community, things
7 that you see from your perspective that we need to
8 work on in South Carolina, or you might be able to
9 work on from the -- if you were elected to the
10 Supreme Court?

11 A. As I said, the technology issue is one that's going
12 to develop further. We're going to -- because the
13 more we expand the access to the documents within
14 the court system, the more we have to be guarded to
15 make sure that we don't violate individual's
16 rights. Justice Toal was taking significant steps
17 in that regard and had -- when she was Chief
18 Justice, to ensure that the court system seeks to
19 protect privacy. That's one area that I think that
20 we'll have to recognize in the future.

21 I think there's always the issue of issuing
22 well-reasoned decisions, but at the same time
23 ensuring the promise of those decisions. Both of
24 those are laudable goals, sometimes there can be --
25 there's tension in a conferencing vote -- vote of

1 goals because the more you seek to issue in depth,
2 well-reasoned decision, you'll slow down the
3 process. But that's what I would envision. A
4 laudable goal is what -- when did it -- it's been
5 throughout history, but it's still will remain one
6 that the court is going to have to continue to deal
7 with.

8 **Q. And finally, I just hate to have you here and not**
9 **take advantage of this -- what I think is a golden**
10 **opportunity. Do you see any legislative changes,**
11 **any things that you would recommend to the General**
12 **Assembly to consider as far as changes that would**
13 **benefit the judicial system and the -- the judicial**
14 **branch of government?**

15 **A. Not at this time.**

16 CHAIRMAN CAMPSER: Representative Smith.

17 REPRESENTATIVE SMITH: Thank you, Mr.

18 Chairman. And Judge Anderson, welcome.

19 EXAMINATION

20 (By Rep. Smith)

21 **Q. I would point out one thing to you when you heard**
22 **about the negative comments about the court**
23 **personnel and the litigants. You've got two of**
24 **your employees behind you who are obviously here**
25 **supporting you and I think if you were being**

1 abusive with them you would have no one behind you
2 from the Administrative Law Court supporting you.
3 So I want to point that out.

4 We can appreciate Senator Hembree's questions
5 on the judicial philosophy in that regard, but also
6 one thing that the Supreme Court does by
7 constitution is regulate the practice of law and
8 one issue I think that we need to always discuss
9 with the candidates is about the regulation of the
10 practice of law and how that affects attorneys
11 practicing law because the way I see policy set
12 forth in where the court says this aches to move
13 cases in a timely manner, which I certainly
14 understand that, but that also sometimes intersects
15 in with the quality of life of attorneys. And one
16 thing that you look at the members of the court and
17 people who are applying, most of them have judicial
18 experience, practiced law at one point -- not
19 practice law in quite a while. So one issue that I
20 want candidates to comment on is the regulation of
21 the practice of law and how you balance the need
22 for disposition of cases and that with the practice
23 of law, especially in the rural areas where you've
24 got lawyers who have to practice in numerous courts
25 to make a living. They can't specialize into these

1 -- into certain areas because they have to balance
2 family court, magistrates court, general sessions,
3 common pleas, and it seems to me that the courts
4 kind of leaving those attorneys behind as they
5 continue to promulgate rules, orders, and that
6 effect. So I'd like to hear from you in that
7 regard.

8 A. Well, what rules are you asking about? Because you
9 say what would my position be in those cases. I
10 think in every instance that the -- the judge --
11 judging of the practice of law should be done from
12 a reasonable standard and that of a -- what --
13 adequate assistance of counsel are actually
14 utilizing the PCR in terms of prevailing
15 professional norms. And so --

16 Q. I don't think I'm talking so much about that as I
17 am about the adoption of court rules. The
18 adoption, and I know they come from the bar, but
19 more importantly what I've seen over the past few
20 years is orders from the court. And regulate --
21 how they're regulating the practice of law and how
22 they are -- how they are in -- how they are sort of
23 telling folks how we're going to dispose of cases,
24 you know, and I'm -- and specifically I want --

25 A. Okay.

1 Q. -- to talk about the magistrate court orders
2 telling them we're going to dispose of DUIs within
3 90 days?

4 A. I think my response to that will go all the way
5 back to when I first became a judge. My father --
6 and I've really employed this -- this teaching that
7 my dad gave, but when I became a judge I asked my
8 dad for advice and he gave me very little, but one
9 of things he told me was, let lawyers try their
10 cases. And -- and when I say that, I've learned a
11 lot, that if you let lawyers utilize their own
12 wisdom and how to handle their own cases, justice
13 will more aptly be done. So I think all rules
14 should be subservient to that thought process.

15 Q. And it's just -- and I guess what I'm trying to --
16 and I certainly appreciate that, but what I'm
17 trying to get at is I've watched over the years
18 when we looked at the initiation of saying we --
19 we've got a DUI backlog and this one size fits all
20 or you move on to the expungements when the General
21 Assembly is debating expungements and all of a
22 sudden we receive orders from the court that say
23 the expungements are going to be handled by the
24 solicitors, which ultimately we did is -- and in my
25 opinion is a good idea, but that should have come

1 from the legislature and not from the court. And
2 that follows along -- along the lines of what
3 Senator Hembree was talking about is the philosophy
4 of judicial philosophy.

5 What I'm concerned about, I think is I see the
6 -- the implementation via -- through orders of the
7 court on things that sometimes encroach upon the
8 legislative prerogative or also on mandating
9 certain ideas on how you administer the practice of
10 law. How you dispose of cases and those are the
11 things that -- that sometimes, in my opinion,
12 respectfully, it oversteps the bounds of the court.

13 A. I will say that the South Carolina Constitution in
14 our state specifically sets forth that the Supreme
15 Court controls the admission of the practice of law
16 and there is a regulation code the individuals
17 therein. So that is an authority that is vested
18 with the court.

19 As far as the General Assembly is concerned, I
20 -- if it's a political question situation I -- I
21 think courts should defer to the General Assembly
22 and -- in regard to policy issues that are within
23 the parameters of the General Assembly.

24 REPRESENTATIVE SMITH: Okay. All right.

25 Thank you.

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CHAIRMAN CAMPSER: Representative
Rutherford.

REPRESENTATIVE RUTHERFORD: Thank you,
Mr. Chairman.

EXAMINATION

(By Rep. Rutherford)

Q. Judge how are you?

A. Fine.

Q. Good. Let me go back a little bit to what
Representative Smith was talking about and one of
the concerns that I've seen. Since you are running
for the Supreme Court, it does now -- if you were
successful it would fall under your purview. But
the quality of life of lawyers that in the 20 years
that I've been practicing went from -- I remember
this lawyer in Richland County and every day about
3 o'clock she was at Pavlov's or Salty Nut and she
was having a drink and she wouldn't come to try
cases and all the solicitors knew it and all the
judges knew it and we just kind of dealt around it;
but you just don't see that anymore.

And in Richland County we probably have court
50 weeks out of 52, if not 52 out 52 -- well
there's always court. And for those of us like
Murrell that practice in other counties and in

1 various courts it has begun to feel like this
2 hamster on a wheel that we are working towards some
3 conclusion that we'll never get to. The prior
4 Chief Justice's Order that DUIs had to moved within
5 90 days, made it so that magistrates now feel like
6 they can say "no" to continuing anything.

7 And I had -- and I'll bring this up again and
8 again, I had five different court notices starting
9 with federal court, going all the way down to
10 magistrates court. I sent all the notices to the
11 magistrates court and told her I couldn't be there
12 and she said "No, I'm not going to continue your
13 case, the Chief Justice said we have to try the
14 case." If I were to not be in the General
15 Assembly, I could try a case and be in court
16 somewhere literally every single week. When I ask
17 a judge for protection, Judge King, Judge Newman, a
18 couple other judges don't sign orders of protection
19 for lawyers without getting the permission of the
20 solicitor. Solicitors don't get my permission, but
21 I have to get theirs.

22 So at what point do we start to fall back a
23 little bit and start to look at the quality of life
24 for those of us that have entered a profession that
25 when I entered it you were -- if you had a lawyer,

1 that was simply your lawyer. Now, if you call a
2 lawyer's office and they don't call you back fast
3 enough you go on Google and you rate the lawyer and
4 you say that they are deficient and you give them
5 one star. You don't ever have to call the Bar.
6 You never have to file a complaint. You can tell
7 all your friends to do the same thing. You've now
8 rated this lawyer, this person that the Bar also
9 regulates, that the Supreme Court also regulates,
10 and we are this hamster on a wheel trying to please
11 five different masters and literally going nowhere.

12 The prior Chief Justice and I had a
13 conversation about North Carolina, I think they
14 have three weeks for a lawyer that you can put in
15 and take three weeks off, no questions asked, just
16 send in a letter and say that that's what you want
17 to do. We don't have that. We just keep going and
18 going and going and going and as members of the
19 General Assembly, it's even worse because everybody
20 wants to try my case before I go back into session.
21 Everybody wants me to try it as soon as I get out.
22 The judges go "Well, Todd, you're going to be gone
23 for 6 months." Well, I'm not going on vacation.

24 So when does it stop this constant need to
25 move cases, move cases, move cases, and get us to

1 **the point where we are satisfied with the number**
2 **that we're moving and the direction that we're**
3 **heading in so that we can allow lawyers to have**
4 **some quality of life.**

5 A. Well, I'll start by saying that when you've become
6 a big shot lawyer like Todd Rutherford, you are
7 going to stay pretty busy.

8 **Q. Murrell Smith would have been a better example.**

9 A. But there's a -- as you were talking about it,
10 there's two sides. One is, you brought up Google.
11 As far as knowing my lane and knowing my authority
12 I'm pretty sure I can't control Google, but I go
13 back to our court and as a Supreme Court Justice I
14 would encourage the judges of the judicial --
15 judicial system to follow our lead. And I don't --
16 you haven't practiced before our court, but I can
17 tell you when attorneys let us know that they need
18 a protection we -- we grant it. We recognize that
19 you have a life outside of -- of just being a trial
20 lawyer. And honestly, I've been a trial lawyer, I
21 know what it's like.

22 I tell people right before a trial will begin
23 I would ask why the heck do I want to do this. As
24 soon as it begins, I'd ask why I would want to do
25 anything else because I love doing it. But there's

1 a lot of pressures that come with that. Obviously,
2 if you need time off from those pressures of -- it
3 sounds to me what you're telling me is that the
4 Supreme Court needs to grant direction to the --
5 the lower court as to how lawyers are treated when
6 they need time off.

7 **Q. Okay.**

8 CHAIRMAN CAMPSSEN: Any other questions?
9 I have some if -- I was going to let the
10 members go first.

11 EXAMINATION

12 (By Chairman Campsen)

13 **Q. Judge, thank you for appearing before us and for**
14 **offering yourself for really the most important**
15 **court in the State of South Carolina.**

16 I have a couple of questions. The first one
17 being I want to address something that was raised
18 in your -- in the -- I guess it was the Citizens
19 Committee information about there was an allegation
20 that you were not impartial when it came to
21 environmental cases. Was that -- was that a -- the
22 ballot box survey.

23 So first of all, explain to the Commission
24 your court's role when it comes to environmental
25 permitting cases?

1 A. Most environmental cases, if not all, I can't think
2 if they're coming from a different route. They
3 either come -- they come from the DHEC and then
4 they are either DHEC cases specifically or what we
5 call OCRM, Office of Coastal Resource Management.
6 DHEC makes a decision and then if a party is not
7 pleased with that decision they come to our court
8 for a contested case review. In other words, a no
9 vote review we are -- we are the trial court, we
10 make findings of fact and conclusions of the law in
11 that regard. They can come in a variety of cases
12 and if we -- there's many different angles that we
13 hear on environmental cases.

14 **Q. Are you the only court that hears those appeals?**

15 A. By in large, yes, sir.

16 **Q. Are -- technically in that regard you were actually**
17 **part of the executive branch; is that correct? You**
18 **-- your court is the court where final is the -- is**
19 **the form where final agency action occurs; is that**
20 **correct?**

21 A. Technically, yes. It is -- it is a judicial review
22 we call a court of record.

23 **Q. Right.**

24 A. But it is the final determination by executive
25 branch.

1 Q. And really the Administrative Law Court judge
2 replaced the old hearing officer role in that --

3 A. Yes, sir.

4 Q. -- regard before you or the Administrative Law
5 Court there were hearing officers appointed to hear
6 contested permitting cases; is that correct?

7 A. Correct.

8 Q. All right. So because of that -- the role that the
9 court plays, is it fair to say that you would
10 review a lot of contested environmental permitting
11 cases?

12 A. That's a substantial amount of our litigation.

13 Q. So there would be a lot of --

14 A. When I say that -- when I say substantial amount,
15 the number of cases is not that many when compared
16 to the other cases that we hear. But --

17 Q. Relative to the other courts?

18 A. No, I'm talking about in our courts --

19 Q. Yeah, but I'm asking relative to other courts.

20 A. Oh, relative to other courts we -- we pretty much
21 hear all of them.

22 Q. Yeah, you hear all of them and other courts don't
23 hear any of them basically?

24 A. Right, yeah.

25 Q. Okay. So you hear a lot of cases; there's a lot of

1 opportunity for people to be upset about your
2 decisions when it comes to environmental
3 permitting?

4 A. The problem for us is that we can't hide behind the
5 jury, we have to make the decision.

6 Q. Okay. Are you aware of Article 12, Section 1 in
7 our Constitution? I'm going to read it to you.
8 (As Read.) The health, welfare, and safety of the
9 lives and property of the people of this state and
10 the conservation of its natural resources are
11 matters of public concern. The General Assembly
12 shall provide appropriate agencies to function in
13 these areas of public concern and determine the
14 activities, powers, and duties of such agencies.
15 Are you familiar with that --

16 A. Yes, sir.

17 Q. -- constitution? And so you are aware that there
18 is a -- even a constitutional duty for the State of
19 South Carolina, its agencies, the legislature to
20 protect natural resources; is that correct?

21 A. Correct.

22 Q. And you to -- you take that duty seriously --

23 A. Absolutely.

24 Q. -- I assume? Okay. Thank you. I just wanted to -
25 - what I want to do is get that on the record

1 because I know you personally. You do take
2 provisions of the Constitution seriously, number
3 one, but number two, you do hear a lot of
4 environmental permitting cases.

5 A. Yes, sir.

6 Q. Because of your position in the Administrative Law
7 Court and therefore you may have more disgruntled
8 parties when it comes to the outcome of those cases
9 because you're in a position you have to decide
10 them; is that correct?

11 A. If there's a court that's going to have disgruntled
12 individuals involving environmental litigation, it
13 is the Administrative Law Court.

14 Q. Right. I'm going to ask you a couple more
15 questions. As I see it there really -- there's a
16 continuum in -- there's a continuum whereby judges
17 rule upon matters of constitutional law and I want
18 to ask you where you think you lie on that
19 continuum as I -- as I express it. The first is,
20 where a judge would apply an underlying
21 constitutional principles according to its original
22 intent -- the original intent that the drafters of
23 that provision in the Constitution had and apply
24 that to contemporary situations. That's kind of an
25 originalist or original intent perspective on

1 interpreting constitutional -- or applying or
2 construing constitutional provisions. Applying an
3 underlying constitutional principles according to
4 its original intent to a contemporary condition or
5 circumstance.

6 A. Do you want me to answer that one?

7 Q. Well, that's one end -- you want to hear the other
8 end of the continuum?

9 A. It's whatever -- however you're going to ask. I
10 didn't know if you wanted me to go ahead and answer
11 it.

12 Q. No, I wanted the other end because, you know, a lot
13 of people may fall somewhere in the middle, but the
14 other end would be conforming the underlying
15 constitutional principle to contemporary conditions
16 irrespective of the original intent of the framers.
17 And that's probably a good statement or best as I
18 can come up with, two ends of the continuum, one
19 original intent and one where you're conforming a
20 constitutional principle to contemporary
21 conditions. Which do you think is the appropriate
22 approach?

23 A. I -- I don't see -- as humbly as I can say, I don't
24 see those as two ends of the spectrum. I -- I
25 think there's a problem with any judge that starts

1 taking the approach that -- I'll start with the one
2 about the judge conforming, I think is the phrase
3 you used.

4 Judges need to follow the text of the -- of
5 the Constitution. The -- and only seek to
6 determine the intent once you -- there's an
7 ambiguity in the Constitution. So I -- I don't
8 really see it as a threat in our system, the -- the
9 greater the latitude judges taking and what they
10 can discern to be the intent.

11 My problem with the original intent, I call it
12 a doctrine, is I think that those who expand on
13 that view are getting the cart before the horse.
14 Our case law sets forth a greater restraint and
15 construing the Constitution or actually it's more
16 -- they use the phrase construing it as
17 interpreting the Constitution and then there's a
18 phrase construing the Constitution. I think it's
19 more apt in determining the Constitution.

20 The greater restraint should be made in
21 determining intent in the constitutional arena. I
22 say all that, that it appears to me that the
23 original intent individuals jump to intent before
24 they should. I think that the first thing that a
25 court should do is look at the text of the statute

1 and determine whether or not it plainly addresses
2 the issue.

3 If the text in the statute plainly address the
4 issue, you need to go no further; follow the
5 Constitution as written. And then you have to deal
6 with once you ascertain the -- the meaning of the
7 text, how you construe that to apply to the case at
8 controversy.

9 **Q. Okay.**

10 A. I think that, that -- that approach protects --
11 protects our system of justice.

12 **Q. Okay. Thank you.**

13 A. It keeps judges from having unfettered discretion.

14 **Q. Next question. What is your opinion of the types**
15 **of policy matters that -- that the court should**
16 **deem nonjusticiable political questions?**

17 A. I don't know if I can point to the type of policy
18 matters. I will say that if you go back and look
19 at how our system of justice -- I don't want to get
20 off of scale here, but look at how our system of
21 justice is developed. The common law -- the
22 development of a law through common law. There was
23 certainly policy considerations that went in to
24 determining what was appropriate precedent and then
25 the ultimate issues of law with the stare decisis

1 protection.

2 You fast forward that to the system that we
3 have now, we have legislatures who enact statutes
4 and we have constitutions. In that area, the
5 court's review of policy is greatly restricted. I
6 notice that it was a South Carolina Supreme Court
7 case that held that the principal source of the
8 declaration of public policy in this state is the
9 General Assembly. The courts assumed that
10 prerogative only in the absence of legislative
11 declaration. I think that's a quote.

12 They went on to say, however, the court
13 exercises restraint when undertaking the amorphous
14 inquiry as to what constitutes public policy. Now,
15 when I consider that statement that I just gave, to
16 be concerned about -- the principal source maybe it
17 should be -- that should have been written
18 entirely. And also to say that -- that the court
19 -- the strength the court exercises before
20 undertaking it.

21 But I think the best case to me that reflects
22 my view of that was U.S. vs. Patton, the Supreme
23 Court case was some time ago. But it held that
24 unless deductible as the given circumstances of a
25 constitutional and statutory provision. Public

1 policy should be accepted as a basis for judicial
2 determination, if at all, only upon utmost
3 circumspect. I think that is a good criteria for a
4 court to look at that -- an issue of public policy
5 comes before the court, the first question should
6 be, if at all, should I make this determination.

7 And then secondly, even if I duly needed
8 utmost circumspect. I'll finally close to this --
9 concerning this question of the law that I've seen
10 in this regard sets forth various factors to
11 consider. It sets forth that the court should not
12 consider issues of public policy. If they've been
13 specifically delegated to a branch of government,
14 should not consider it public policy if it involves
15 areas that are not judicially discernable or
16 manageable standards that you cannot -- should not
17 consider public policy.

18 The consideration would involve the court in
19 initial policy determination in violation. The
20 court should respect the branches of government
21 because if you fail to respect the branches of
22 government you potentially step into a
23 constitutional crisis which the court should avoid.

24 **Q. Thank you.**

25 CHAIRMAN CAMPSER: Senator Malloy.

1 SENATOR MALLOY: Thank you.

2 EXAMINATION

3 (By Senator Malloy)

4 Q. How you doing, Judge? Judge, I noticed that you
5 mentioned a few times, said "like last time" when a
6 certain question was asked and of course we got
7 five new Committee members this time that have
8 never had a chance to go through this process
9 before and may have asked some questions last time
10 that may not have come out this time, but I do have
11 one. One is that -- I just start by saying, you've
12 been a judge for ALJ for how many years now?

13 A. Over 20.

14 Q. Twenty years. In those 20 years, have you ever had
15 any occasion to file a matter with the Supreme
16 Court with a lawyer -- against a lawyer?

17 A. No, sir.

18 Q. All right.

19 A. I -- I have brought some lawyers back into my
20 chambers --

21 Q. Okay.

22 A. -- and discussed with them their failings and my
23 desire that they be cured. But -- and I can go
24 through the ethical rules. I would follow those
25 and I can give them to you if you want me to.

1 Q. It is your choice.

2 A. I've never been brought to the standpoint of
3 ethically feeling that I was required to file any
4 action against an attorney.

5 Q. In your years before being on the bench, you said
6 that you were a trial lawyer?

7 A. Yes, sir, Attorney General's office.

8 Q. Attorney General's office. So in your years in the
9 Attorney General's office, did you -- did you try
10 cases in front of a jury?

11 A. Oh, many.

12 Q. Many. You tried cases to verdict?

13 A. Yes, sir.

14 Q. And then how many years was that, it was?

15 A. That was almost 20 years there.

16 Q. Twenty years there.

17 A. Nineteen.

18 Q. So you've been practicing law for a long time now.

19 A. I guess the gray hair exemplifies that, yes, sir.

20 Q. Okay. The -- one of the issues that we have here
21 on a yearly basis is funding as it relates to the
22 court system. Do you have an opinion or have you
23 -- and obviously you realize that they come over
24 here to the General Assembly and I for one don't
25 think it's that pretty of a picture to see judges

1 **over here campaigning for funds --**

2 A. Right, they look --

3 **Q. -- so do you have a -- do you have an opinion on**
4 **any type of formula or any way that the court could**
5 **be funded which is apparently a task, i.e.**
6 **percentages, have you considered that?**

7 A. I tell you the one area I do -- I have considered
8 is I don't like funding the courts through filing
9 fees. I think it -- and maybe some people would
10 disagree with this, but my perspective of our
11 court, the problem with filing fees is you're
12 dependant upon bringing those cases in to -- to
13 fund your court and then when the filings go down,
14 your revenue goes down. It is -- it's not a
15 consistent way for the court. I would like to see
16 the court -- I notice the courts have really gone
17 to that, at least the judicial system. And I -- I
18 recognize it grants the independence from the
19 legislature by having it being funded by the filing
20 fees, but my struggle is it's not a stable source
21 of revenue.

22 **Q. Do you believe a stable source of revenue is to**
23 **take a certain percentage of the -- of the general**
24 **appropriations budget?**

25 A. That certainly would be one.

1 Q. Given it some thought?

2 A. Yes, sir.

3 Q. Okay. The -- the -- we're talking about
4 relationships to the legislature. I guess one
5 question is, do you believe that a Supreme Court
6 has power to issue a writ of mandamus against the
7 General Assembly or any of its members in order to
8 get them to perform a certain duty -- or a certain
9 action?

10 A. Against the members of the General Assembly -- I
11 would start with -- before you could issue a writ
12 of mandamus, you have to start with the criteria
13 for issuing an writ of mandamus. And you can't
14 issue an writ of mandamus unless -- there's four
15 criteria, I think I can give them. Is that there
16 is a duty that exists that, that duty must be
17 ministerial in nature. That the individual must be
18 entitled to the legal discharge of that duty. And
19 finally, there's no adequate remedy of law.

20 The problem with a hypothetical I -- I can't
21 imagine that there would be a legislature or
22 legislative decision that would be ministerial in
23 nature.

24 Q. Okay. And so -- would it be a ministerial
25 responsibility of the court?

1 A. Say that again, I couldn't hear you.

2 **Q. Would it be a ministerial responsibility as it**
3 **relates to the court and the General Assembly?**

4 A. Well, it would -- it would be a responsibility the
5 Supreme Court would have under the mandates of writ
6 of habeas corpus. And also -- well, I can even
7 back up. Did you use an individual. The only time
8 that either -- there would be a writ of habeas
9 corpus against the individuals, if they had all the
10 criteria under a writ of habeas corpus and then
11 there may be a situation where the court -- the
12 court would require an individual to exercise a
13 ministerial responsibility to -- as you start
14 moving up from an individual, once the
15 consideration gets wider and wider, for instance as
16 you move toward an entire branch of government,
17 you're -- you're -- on one side you're moving away
18 from ministerial discretion going into discretion
19 and secondly you're getting closer and closer to
20 the political question doctrine, neither which the
21 court needs to be violated.

22 **Q. And so in certain circumstances if the court says**
23 **that we -- that legislature should do something**
24 **then do you have an opinion as to whether the court**
25 **has the authority or ability to hold the**

1 **legislature in contempt?**

2 A. Well, that's -- actually that's my problem is the -
3 - what was I going to say. What I said earlier in
4 my testimony, I don't know what question I was
5 answer -- answering, but I said the court should
6 avoid constitutional crisis. That's the -- the
7 mind -- the consideration that the court should
8 have at all times in making decisions involving
9 another branch of government is the ultimate --
10 because you went straight to the ultimate
11 resolution and that is the only way to vote for the
12 establishment of remedy is through the powers of
13 contempt, but the court has no enforcement
14 authority. The court depends upon another branch
15 of government that being the executive branch of
16 government to -- to enforce its orders and also the
17 court is dependent upon the legislature to fund the
18 court.

19 So anytime you start entering into a remedy it
20 would be a consideration of contempt power that
21 would be something that I think the court should
22 run away from.

23 **Q. Do you use that same logic and analysis if the --**
24 **if the -- if there was a judgment of some sort as**
25 **to whether or not the Supreme Court had the**

1 authority to issue the comptroller writ of mandamus
2 to pay a debt?

3 A. Yes, sir.

4 Q. Give me your thoughts on -- and without asking a
5 direct question sort of give you -- going too far
6 into it, docket control is an issue that we have
7 had. We've had some -- a case that came down from
8 the court. We've had some committees that have
9 come in. Legislature has sort of tinkered with it.
10 Right now we have the solicitors controlling the
11 docket. Just give me your understanding --

12 A. I thought these -- I was brought up under the
13 situation were the solicitors did control the
14 docket. After Langford, the court held that that
15 was unconstitutional and in a sense implemented
16 their -- a committee that --

17 Q. And that's why I'm asking you a question getting
18 you to expound on it. You are given the
19 opportunity, if there are any thoughts that you
20 have or any thoughts as it relates to docket
21 control as to after Langford?

22 A. I would -- trying to be careful about because we
23 have a current system that I want to be careful to
24 by too much criticizing it. I -- I would --

25 Q. And that is why -- let me -- let me pause for a

1 **second. And that is why as opposed to asking you**
2 **your -- a specific question, giving you the chance**
3 **to tell us what -- any thoughts that you have on it**
4 **and --**

5 A. I --

6 Q. -- expound --

7 A. -- I --

8 Q. -- as you like.

9 A. I think I was going to get there. You asked a very
10 good question and in a very diplomatic way. And I
11 think that --

12 Q. I don't get that -- I don't that very often to say
13 I'm being very diplomatic, but --

14 CHAIRMAN CAMPSER: Strike that from the
15 record. (Laughter.)

16 Q. It think that it is an important question that as
17 we go forward I think it's important for us to know
18 how we're going to perform and act as a state so
19 I'm interested in it.

20 A. And I hate -- hate to keep referring to something I
21 started earlier, but it still could -- it follows
22 into this line of thinking, is let lawyers control
23 their cases.

24 As I -- it concerns me, the deeper the court
25 gets in to managing -- micromanaging court systems

1 and the litigation of dockets, in that regard I --
2 I think that they -- and I'm talking about this
3 committee. I think it would be more -- I would
4 hope that the court would offer a helping hand, but
5 -- an advice would not seek to control everything.

6 **Q. Okay. In your practice and in your life as a**
7 **judge, have you -- or in life in general, have you**
8 **ever had the opportunity to express your thoughts**
9 **on the death penalty?**

10 A. Yes, sir.

11 **Q. Okay. When was that and --**

12 A. When you say was -- I've never done it publically.
13 I -- I prosecuted a death penalty case.

14 **Q. What was the result?**

15 A. Well, we originally had it pled out --

16 **Q. Okay.**

17 A. -- but --

18 **Q. So I just wanted to -- I just wanted to be careful**
19 **in saying this because I was saying in life or as a**
20 **lawyer, have you ever had the opportunity or took**
21 **the opportunity to express your opinions of the**
22 **penalty -- death penalty?**

23 A. No, I've never done it publically.

24 **Q. And as a lawyer have you been involved when you**
25 **started telling one case where you were a**

1 **prosecutor?**

2 A. Yes, sir.

3 **Q. And have you ever been on the defense side of one?**

4 A. No, sir. I was trying to think of a -- I don't
5 think I ever did a PCR in the death penalty arena.
6 So -- because that's somewhat like being on the
7 defense side. But I -- so I would say "no" to
8 that.

9 REPRESENTATIVE MALLOY: All right.

10 That's all I have for now.

11 CHAIRMAN CAMPSER: Representative
12 Rutherford?

13 FURTHER EXAMINATION

14 (By Representative Rutherford)

15 **Q. Real quick, can you go back to -- let me -- let me**
16 **move forward and then we'll go back. The issue of**
17 **specialization for the bar that, obviously, all of**
18 **us have been doing it for a while. We understood**
19 **that from the outset we don't specialize here in**
20 **South Carolina.**

21 Can you tell me your thoughts on creating
22 **specialties within the bar, even if we're not**
23 **allowed to advertise as such? Everyone in here**
24 **does a pretty acute practice whether it's Josh with**
25 **business litigation, whether it's Andy with**

1 workers' comp or Kristian with workers' comp.
2 Literally, when you ask people what they do so few
3 lawyers now do this general practice. That if
4 we're going to not be allowed to advertise that
5 we're specialists at least inside the bar, when it
6 comes to fee disputes, when it comes to grievances,
7 when it comes to sitting in judgment of one
8 another, is there any thought that you have or have
9 you heard of this or talked about this with your
10 colleagues, to at least allowing us to specialize
11 inside the bar? Because, for example, I do a bulk
12 criminal practice and I've sat on a -- I've been
13 involved in a fee dispute where the three panelists
14 are real estate, domestic, and commercial
15 litigation and they were asking me questions that
16 indicated they had no clue what a criminal lawyer
17 does, which is fine for them, but not for me
18 sitting here in judgment by my peers. None of whom
19 do what I do and I am as different from them as I
20 am from my father who's a dentist because it's not
21 even close to the same thing.

22 So if you are on the Supreme Court, and the
23 regulation of lawyers, have you thought about
24 creating -- not creating, but actually allowing
25 lawyers to be who they are and what they are, if

1 **not externally, but at least internally inside the**
2 **bar?**

3 A. I obviously have not devoted a lot of thought for
4 that. On one hand, I don't -- I recognize the
5 specialty that I -- the attorney -- from my days
6 with the Attorney General's office where it saddens
7 me that everybody has to pigeonhole themselves. It
8 makes you for a better attorney in that area
9 because you develop more expertise.

10 When you speak of the bar from a judicial
11 standpoint I have absolutely no qualms with the
12 fact that lawyers wish to specialize as long as
13 criteria develop that reflects the efficacy that
14 specialization. That's the best I can come up with
15 right now. As far as the fee disputes that's
16 something the bar needs to address because that
17 sounds like a defect to me on one end.

18 **Q. Well, because we don't have specialties there's**
19 **really no way to address it except by asking**
20 **whether someone wants to do this because we're not**
21 **classified that way by the court.**

22 Going back to the Langford question that
23 Senator Malloy asked, what the court did was said
24 that it is unconstitutional for the solicitors to
25 call cases and then they never fixed it. And so

1 solicitors are still calling whatever cases they
2 see fit.

3 At a certain point in Richland County, the
4 Chief Admin judge kind asks what the deal is with
5 the case, whether it's still up to the solicitor in
6 Aiken, for example, they call the case whenever
7 they're ready. They've got -- they're calling one
8 for me that's six months old and they want to call
9 it to trial and Judge Early ordered me to try it
10 today, in fact. So is there any resolution that
11 you see or an accommodating way to figure out how
12 to get the court to establish and go along with
13 what the court has already ordered?

14 A. Well, there's a committee. The General Sessions --

15 Q. It's been in existence, I think, for -- since
16 Langford, about 3 or 4 years and I don't know what
17 they've done, but I can tell you what they're not
18 doing.

19 A. Well, my problem is I'm not on it either. So I
20 don't know what they've done or what they are
21 doing. Apparently, it is not a whole lot from what
22 you are telling me, but I'm just not sure. I'd
23 have to plead a little bit of ignorance in that
24 area just because I'm not familiar with the
25 committee and I imagine most people aren't.

1 CHAIRMAN CAMPSSEN: Senator Malloy.

2 SENATOR MALLOY: Thank you.

3 FURTHER EXAMINATION

4 (By Senator Malloy)

5 Q. One of the things that we have here in South
6 Carolina and has happened for a period of time, we
7 as litigants, lawyers, citizens, public at-large,
8 sometimes we don't have a clear statement of law to
9 the lawyers, the people in general, as to giving us
10 our blueprint for the way we should act and the
11 things that we should do. We've had a lot of
12 dissents in the last however long period of time,
13 I'm going to leave it to a scholar, but what I'm
14 trying to do is to see what you bring to our court
15 to aid in this process because if we operate under
16 the assumption that an unanimous court is what they
17 have as a vivid ideal being when you -- how do you
18 feel that you play into that? And it's a compound
19 question, would you be offering dissents similar to
20 what's been going on?

21 A. I don't think I'd be offering similar to what's
22 been going on. One of my goals -- if you were
23 going to ask me about that, to be on the Supreme
24 Court is to lessen the three/two type dissents and
25 encourage collegiately among judges, the justices.

1 When you say dissent, a judge should start
2 first with the fact that they listen respectfully
3 to the views of their other judges. In life and
4 especially on the Supreme Court, I think that the
5 intellectual humility can be a very good thing,
6 be open to hear the reasoning of another
7 individual. But I'll also say that dissents are
8 not always bad. It depends upon the situation and
9 I don't believe -- I believe dissents should not be
10 given simply because somebody is not happy, but
11 they should be purposeful.

12 And the purpose, three off the cuff, the
13 purposes that I think of is where the judge wishes
14 to potentially educate the General Assembly about,
15 you know, the dissent with -- that a problem needs
16 to be fixed in this regard.

17 And secondly, where you wish to educate the
18 bench and the bar as to the legal reasonings in
19 this case and matters that lawyers may wish to
20 consider when bringing the next line of cases.

21 And then finally, you should dissent when you
22 believe significantly, that is what I was getting
23 at because you're not just happy about it, but
24 significantly the decision is an error. We wish
25 the court system would be preserved in the future

1 with the correct reasoning.

2 **Q. So going down that line then -- so there are**
3 **questions that we have that are outstanding, do you**
4 **have an opinion as to whether we'd rather have a**
5 **matter settled in law even if it's not settled**
6 **right?**

7 A. That's the -- there's my problem with that. I
8 think that, you know, Senator Hembree was asking
9 about judicial restraint and my views on that. I
10 think one of the first concepts I would like to
11 approach when you say "settled and settled right"
12 is --

13 **Q. It's a backdrop to stare decisis.**

14 A. Yeah, it is. But it's also a backdrop to our
15 common law doctrine because the common law or the
16 development of common law was such a marvelous
17 invention in that you didn't reach stare decisis
18 based on one case, it was a body of law. And by
19 accomplishing the view of -- through the body of
20 law you have the application of a legal concept,
21 various different factual scenarios, that once that
22 common law was reached, it had been tested.

23 Well, you may be wondering where I'm going on
24 this, but now I'm going to bring it back. And that
25 is I think that the Supreme Court needs to not be

1 too anxious to settle issues, but allow those
2 issues to develop before it's pulled up so that
3 when you finally do review the issue it's --
4 there's more than one case maybe that is -- has
5 developed in that area so that the court will have
6 better insight.

7 Now I say that I do recognize that the benefit
8 that our courts have nowadays is that when you're
9 reasoning a case, you also have the benefit of what
10 has occurred in South Carolina and in other states,
11 to analyze whether the issue should be settled or
12 not. So I do -- in that light I do see that the --
13 if there is body of law out there that already
14 exists even though it may not be in our state it
15 can help the court reason -- the court's reasoning
16 in that area if it may be timely to review that
17 case. Did I get off track there?

18 **Q. It is your answers. Thank you.**

19 CHAIRMAN CAMPSER: Any other questions?

20 MR. HITCHCOCK: Mr. Chairman.

21 CHAIRMAN CAMPSER: Mr. Hitchcock.

22 EXAMINATION

23 (By Mr. Hitchcock)

24 **Q. Good afternoon, Judge Anderson, how are you doing?**

25 A. Fine, thank you.

1 Q. After being an hour and a half into it, it's
2 probably a little late to be asking you that.

3 We've kind of covered this a little bit and I
4 hope that I'm not being redundant with the
5 question, but I do have a particular interest in
6 this area. And kind of following on a little bit
7 on some of Senator Hembree's questions in regards
8 to separation of powers and judicial activism.

9 I think there's a well settled tenant in the
10 law that when we think about our State Constitution
11 that it's -- in regards to the General Assembly,
12 that it is a -- it's rather a limit -- it's not a
13 grant but rather a limit on the General Assembly to
14 believe that the General Assembly's authority was
15 limited by the Constitution, some particular
16 provision of the Constitution.

17 A. I agree with that.

18 Q. However, there are a few instances in our State
19 Constitution, and I'm not going to ask you on any
20 of them in particular but there are at least more
21 than one, a few instances where the Constitution
22 places a duty on the General Assembly to take some
23 type of action or to do something. And in doing
24 that action there may be certain public policy
25 decisions that have to be made into how that's

1 done. But obviously, the failure to fulfill that
2 duty or to perform that duty can be challenged and
3 the court in determining -- if the court determines
4 that that constitutional duty hasn't been met, can
5 certainly confine in some of you who, you know,
6 could -- really has a kind of a spectrum of ways to
7 address that. It can either simply confine itself
8 to simply ruling that the Constitution provision
9 has been violated to all the way to prescribing a
10 particular set of remedies and retain jurisdiction
11 and to, you know, take other actions that normally
12 seem intrusive to the General Assembly.

13 Where do you find yourself along that spectrum
14 and just give us some thought on that?

15 A. I'm not sure about spectrum per se. What you have
16 described to me is just -- it reaches the factors
17 that I -- I expressed earlier. That -- for the
18 court to consider it and whether or not to venture
19 into what is considered a political question.
20 Number one, whether it would delegate directly into
21 a branch of government, whether there are
22 judicially assertable and manageable standards.
23 That's probably not within that line of questioning
24 brought up.

25 But the next one was whether the impossibility

1 of making the decision by the court, not making an
2 initial policy decision. Those are instances where
3 the court should avoid answering the question on
4 the political question doctrine. And violative of
5 the, I call it coequal branches of government, but
6 the judiciary, at least originally, considered the
7 weaker branch of government.

8 CHAIRMAN CAMPSSEN: Okay. Thank you. Any
9 other questions?

10 (No response.)

11 CHAIRMAN CAMPSSEN: Judge Anderson, I
12 think that's all the questions we have. We
13 thank you for appearing before and that
14 concludes this portion of our screening
15 process. As you know, the record will remain
16 open until the formal release of the report
17 and qualifications and you may be called back
18 at such time if the need arises. I thank you
19 for offering and thank you for your service to
20 the State of South Carolina.

21 JUDGE ANDERSON: I enjoyed the questions.
22 Thank you.

23 CHAIRMAN CAMPSSEN: Thank you.

24 Judge Goodstein, welcome.

25 JUDGE GOODSTEIN: Thank you. Thank you

1 very much.

2 CHAIRMAN CAMPSSEN: Good to have you.
3 Please raise your right hand.

4 JUDGE GOODSTEIN: Yes, sir.

5 (The Judge was sworn.)

6 CHAIRMAN CAMPSSEN: Thank you. Have you
7 had an opportunity to review your personal
8 data questionnaire and sworn statement?

9 JUDGE GOODSTEIN: Yes.

10 CHAIRMAN CAMPSSEN: Are they correct?

11 JUDGE GOODSTEIN: Yes, sir.

12 CHAIRMAN CAMPSSEN: Does anything need to
13 be changed?

14 JUDGE GOODSTEIN: There was a little bit
15 of additional -- I think I'm feeding back,
16 there's a little bit of additional information
17 that Mr. Dennis wanted me to provide, just a
18 little extra information, backup information
19 and I provided that, but there were no
20 changes.

21 CHAIRMAN CAMPSSEN: Okay. Thank you.
22 Do you object to our making these documents
23 and any amendments, if applicable, a part of
24 the record of your sworn testimony?

25 JUDGE GOODSTEIN: I do not.

1 CHAIRMAN CAMPSEN: Okay. It will be done
2 at this point in the transcript.

3 [EXHIBIT 15, JUDICIAL MERIT SELECTION
4 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
5 HONORABLE DIANE SCHAFFER GOODSTEIN, ADMITTED.]

6 [EXHIBIT 16, SWORN STATEMENT FOR THE
7 HONORABLE DIANE SCHAFFER GOODSTEIN, ADMITTED.]

8 CHAIRMAN CAMPSEN: The Judicial Merit
9 Screening Commission has thoroughly
10 investigated your qualifications for the
11 bench. Our inquiry has focused on nine
12 evaluative criteria and has included a ballot
13 box survey, thorough study of your application
14 materials, verification of your compliance
15 with state ethics laws, search of newspaper
16 articles in which your name appears, study of
17 previous screenings, check for economic
18 conflicts of interest. We have received no
19 affidavits filed in opposition to your
20 election. No witnesses are present to
21 testify.

22 Do you have a brief opening statement you
23 would like to make at this time?

24 JUDGE GOODSTEIN: I would like to thank
25 each and every one of you for participating in

1 this process. I think that the way that we
2 select judges in the State of South Carolina
3 is second to none. And it is -- continues to
4 be viable and legitimate on a nationwide basis
5 because of you. It's real important and you
6 need only spend a little bit of time at
7 National Judicial College around colleagues
8 from around the country who have different
9 kinds of -- or different methods of selecting
10 judges to realize what a treasure we have in
11 South Carolina and how wonderful it is.

12 And I just want to thank each and every
13 one of you for spending all of the time. I
14 especially want to thank Elizabeth for putting
15 up with all my questions, she's been great and
16 Patrick for my questions and I just want to
17 say thank you.

18 It's important, it gives us the benefit
19 of judicial independence and yet it serves the
20 public, I think, in the most perfect balance
21 of the system in the country quite frankly,
22 so thank you for that.

23 CHAIRMAN CAMPSER: Well, thank you for
24 those comments. I would say that I hear those
25 comments often from judicial candidates and

1 from judges, particularly from judges who
2 interact with judges from around the country.
3 And it's a very near unanimous opinion as far
4 as I can tell among members of our judiciary.

5 Please answer counsel's questions at this
6 time.

7 JUDGE GOODSTEIN: Yes.

8 MR. DENNIS: Thank you, Mr. Chairman.

9 EXAMINATION

10 (By Mr. Dennis)

11 **Q. Good afternoon, Judge Goodstein, how are you today?**

12 **A. I'm fine.**

13 **Q. Before we get started I'd like to note for the**
14 **record that based on the testimony contained in the**
15 **candidate's PDQ which has just been included as**
16 **part of the record with the candidate's consent.**
17 **Judge Goodstein meets the constitutional and**
18 **statutory requirements for this position regarding**
19 **age, residence, and years of practice.**

20 **Judge Goodstein, would you tell the Commission**
21 **why you'd like to serve on the Supreme Court?**

22 **A. I would like to serve on the Supreme Court for --**
23 **three primary reasons. On -- I would begin of**
24 **course by saying I am fixing something that isn't**
25 **broken in my life. I love being a Circuit Court**

1 judge, it has been the hallmark of my life. I love
2 what I do, every day it is a wonderful opportunity.

3 My interest in serving on the Supreme Court,
4 there are really three reasons. The intellectual
5 part of it would be interesting and fascinating and
6 I think that would be extremely enjoyable. But
7 about three years ago I served -- or had an
8 opportunity to go to the National Judicial College
9 and had the experience of participating in a
10 Judicial Leadership Program that was sponsored by
11 the National Judicial College and I had the
12 opportunity to develop a couple of different, if
13 you will, thinking out of the box kind of things.
14 And came back and again tried to implement them.

15 Let me give you an example of what I'm
16 interested in doing and I think that I can so much
17 -- I think I could do it on -- from the -- from the
18 place of the Supreme Court much better than I'm
19 able to do it from the Circuit Court. For example,
20 I would love the opportunity to expand the Veterans
21 Court. I was interested in doing it and it's very
22 difficult to have the resources and the ability to
23 do that from the Circuit Court. I would love the
24 opportunity to be able to expand the Veterans Court
25 into the medium and smaller counties like my

1 circuit has. It allows us -- would allow us to use
2 existing infrastructure. It would allow for our
3 folks, particularly in probation and parole, to
4 help Veterans access support that many perhaps are
5 not and I think that there is a need. I think
6 there's a growing need and I would love the -- to
7 have that platform to help me do that.

8 I'm also interested, very interested, because
9 I have been pre-Langford, Langford, and now post-
10 Langford and I would like to think that I could
11 give some assistance; I would like to think that I
12 could, working with the solicitors, working with
13 defense, the bar, by working with the legislature,
14 and working with the court system, with circuit
15 court, I've been there a long time. And I'd love
16 to be able to finish Langford. It is, I think, in
17 an interesting place. I know that the Chief
18 Justice has done a number of orders that are case
19 management orders, but they don't exist all around
20 the state. One size doesn't fit all. What's going
21 to work in Charleston and in Greenville and
22 Columbia is not going to work in Dorchester or
23 Orangeburg or Calhoun, but I'd love to be a part of
24 the process to finish that. I think that our
25 criminal dockets could benefit from Langford being

1 completed if you will and I'd love to be a part of
2 that. I think I could be a part of that. And I
3 think I enjoy a strong relationship with the
4 solicitors and the defense bar and would just love
5 to have an opportunity to try to bring that to
6 conclusion.

7 **Q. Thank you. Judge, how do you feel that your legal**
8 **and professional experience thus far would assist**
9 **you in being a good justice on the Supreme Court?**

10 A. I am entering -- soon to enter my 19th year on the
11 Circuit Court and before I was of course on the
12 Circuit Court I had an opportunity to practice law.
13 I prosecuted cases. I represented large
14 institutions. I represented the aviation authority
15 and our school district. I had an opportunity to
16 do both the plaintiff's work and defense work.

17 So in the practice of law, I had a varied
18 practice. And by being on the Circuit Court, I
19 think at this point in my career, I have tried
20 everything that there is to try quite frankly. I
21 enjoyed all of it, but I've certainly been exposed
22 to class action work, capital work, capital PCR
23 work, civil litigation, products liability. I've
24 been a special referee for the unauthorized
25 practice of law and I have sat with the Supreme

1 Court.

2 So at this point in my career I have a very
3 multifaceted experience on the Circuit Court and I
4 think that having had all of those experiences both
5 in the private practice and on the bench, all would
6 serve me well on the Supreme Court.

7 **Q. Thank you, ma'am. Would you describe for the**
8 **Commission your general judicial philosophy?**

9 A. I believe that when the founding fathers came up
10 with this extraordinary idea of democracy, which we
11 are all the benefit of, and believed that we ought
12 to have three branches of government, that it was a
13 stroke, maybe even a divine brilliance, but it was
14 a stroke of brilliance.

15 I absolutely am dedicated to the existence in
16 the individuality of each of those three branches
17 of government. And it is my belief that the
18 judicial branch ought to be in the judicial branch;
19 the legislative branch ought to be in the
20 legislative branch; and the executive branch ought
21 be in the executive branch. And what -- by that
22 what I mean is that I do not believe that the
23 judiciary ought to legislate, I genuinely believe
24 that. I do think and I deeply believe that it is
25 incumbent upon the judiciary to keep its eye on the

1 ball and that's to keep the eye on the Constitution
2 for all of us.

3 So I believe in stare decisis. I've done that
4 hopefully as the Circuit Court judge, but I
5 certainly believe that it is incumbent, it is
6 important that there be the separation of powers
7 and that the judiciary take care of its own
8 business as a judiciary.

9 **Q. And judge you touched on this just a little in that**
10 **answer, but to what extent do you believe that a**
11 **judge should or should not defer to the actions of**
12 **the General Assembly?**

13 A. I believe the case law says that when a judge --
14 when the judiciary is reviewing matters which have
15 been done by the legislature that first and
16 foremost it is incumbent that the interpretation
17 and always be towards the constitutionality of
18 those acts; I believe that. And in the event that
19 an act of the judiciary would ever be deemed to be
20 unconstitutional it must be so beyond all
21 reasonable doubt. That standard is extraordinarily
22 high. It respects the separation of powers and I
23 firmly believe that it is the legislature who,
24 obviously, is in connection with the community,
25 with our society. It touches our society and our

1 world on a daily basis and it is incumbent upon the
2 judiciary to leave that alone, but for when those
3 events may, beyond a reasonable doubt, infringe
4 upon the constitutionality.

5 Q. Thank you, ma'am. I'm going to discuss your ballot
6 box results just with you if I could, please.

7 A. Sure.

8 Q. The Commission received 646 ballot box surveys
9 concerning you and the nine evaluative criteria.
10 Of those, 99 included additional comments, many of
11 those comments were positives. Some examples are
12 and I quote, "a great judge to appear before,
13 treats jurors and attorneys with a great deal of
14 respect and patience. Hard worker. And I do not
15 always agree with Judge Goodstein, but she has
16 always been fair."

17 Of those 99 comments, however, 43 of the
18 written comments expressed concerns. Primarily
19 those concerns dealt with your temperament and
20 issues of perceived impartiality. Could you
21 respond to those two concerns, please?

22 A. Thank you. I have thought a lot about how to
23 respond and how I feel about those comments. And I
24 will tell you that it breaks my heart that anyone
25 would come in my courtroom and not feel as though

1 they have been treated with respect and with
2 courtesy. It -- it breaks my heart. I would tell
3 you that, you know, you can think that -- well I
4 don't know if that was 18 years ago or 6 months
5 ago. I don't know when those events occurred. I'd
6 love to know when those events occurred. I would
7 absolutely appreciate so much an opportunity to
8 have a dialogue with those 43 people to do one of
9 two things, either to explain at least my position
10 and hear of their position about the demeanor or
11 the impartial lack or perceived lack of
12 impartiality. And have that dialogue and maybe if
13 necessary flat out apologize because the one thing
14 I don't ever want anyone to feel is that they have
15 not been treated with courtesy and with respect and
16 with impartiality so it's heartbreaking for me.

17 I thought about the possibility of somehow in
18 this process because there were no complaints that
19 were filed. So is there a way that we could take
20 that one step farther and allow people like me to
21 find out -- if they need to remain anonymous that's
22 fine with me, but to find out and have a little
23 more of a dialogue to give me an opportunity to
24 learn even more from that experience.

25 I can tell you that when you hear those kinds

1 of things you double down and you're mindful of it.
2 And you want to be better and your mindful of it
3 every single day. But I -- I would love to have
4 more detail. I would love to be able to have a
5 dialogue with those 43 people who are concerned and
6 if necessary apologize. I'd love to have a
7 dialogue. But I -- what I can tell you is I don't
8 take it lightly. I don't take it lightly. I take
9 it with me and I have thought a great deal about
10 what I need to do and what I need to be mindful of
11 because the -- again, the one thing I would like no
12 one to ever feel is that I have not been courteous
13 and caring and impartial.

14 **Q. Thank you very much, Judge. Some housekeeping**
15 **issues to you through real quickly.**

16 **Since submitting your letter of intent have**
17 **you sought or received a pledge from an legislature**
18 **or either prior to this date or pending the outcome**
19 **of your screening?**

20 A. No.

21 **Q. Have you asked any third parties to contact members**
22 **of the General Assembly on your behalf or are you**
23 **aware of anyone attempting to intervene in this**
24 **process on your behalf?**

25 A. I -- I've done the opposite. Folks that I've

1 talked to I have explained to them the letters and
2 the instructions that I've received and asked them
3 quite frankly not to so I -- I'm not aware.

4 **Q. Since submitting your letter of intent to run for**
5 **this seat have you contacted any members of the**
6 **Commission about your candidacy?**

7 A. I have not. But, you know, I do need to -- let me
8 -- I do need to -- let me amend what I just told
9 you because I put it in my answers, my written
10 answers. My husband who represents the aviation
11 authority works on a daily basis with the director,
12 the executive director of the Aviation Authority
13 and that gentleman is Senator Campbell. And I
14 think at some point when it was in the newspaper he
15 very well may have said "Oh, I see that Diane is
16 running for the Supreme Court." And Arnold may
17 have said "yes." He didn't contact him. He
18 certainly didn't ask for any sort of pledge, but I
19 know they had a conversation.

20 **Q. Thank you. Do you understand that you are**
21 **prohibited from seeking a pledge or commitment**
22 **directly or indirectly until 48 hours after the**
23 **formal release of the Commission's report and are**
24 **you aware of the penalties for violating the pledge**
25 **rules?**

1 A. Yes.

2 Q. Okay.

3 MR. DENNIS: Finally, Mr. Chairman, I
4 would note that Lowcounty Citizens Committee
5 reported that Judge Goodstein is well
6 qualified as to the areas of ethical fitness,
7 professional and academic ability, character
8 and reputation, experience, and judicial
9 temperament. The committee also found Judge
10 Goodstein as to the constitutional
11 qualifications, physical health, and mental
12 stability. The committee concluded by saying
13 Judge Goodstein had, and I quote, high energy,
14 a wonderful personality, and would be a
15 terrific justice.

16 I would note that for the record any
17 concerns raised during the investigation
18 regarding the candidate were incorporated into
19 this questioning today. And Mr. Chairman, I
20 have nothing further.

21 CHAIRMAN CAMPSSEN: Thank you. Do any
22 members have any questions?

23 SENATOR HEMBREE: Mr. Chairman.

24 CHAIRMAN CAMPSSEN: Senator Hembree.

25 SENATOR HEMBREE: Thank you.

EXAMINATION

1
2 (By Senator Hembree)

3 **Q. Good afternoon, Judge.**

4 A. Good afternoon, Senator.

5 **Q. Quickly, kind of two areas I want to talk to you**
6 **about. One is just a general -- your general --**
7 **and you touched on some things that interested you**
8 **in the court system, but I'm curious, do you see --**
9 **if you have been on the bench for a lot of time,**
10 **what are the most pressing issues facing the**
11 **judicial branch of government in South Carolina or**
12 **the bar, I would like you to kind of think of those**
13 **together, what are the most pressing issues and do**
14 **you have any suggestions for how to tackle those**
15 **issues?**

16 A. Thank you. Well, you know, funding for the
17 judiciary is always an area of concern. You know,
18 when times are fat and happy, not so much, but when
19 they get lean of course that can get to be very --
20 it -- it can -- it can press everyone and we've
21 been through that. So I want to sort of set that
22 aside and now talk about issues that I see.

23 I really do -- I really do believe that one of
24 the issues that is pressing is the leftover from
25 Langford, I really do. And -- and the reason that

1 I say that is because we're a little bit ad hoc. I
2 remember that the day that the decision came out,
3 once I read it, and went "woah" and I was surprised
4 I will tell you. And we received a memo from the
5 court administration that said "hold up, hold up."
6 And so what has happened is, is that I know there's
7 been a tremendous amount of effort that has been
8 expended to try to acknowledge that decision and
9 come up with a means of meeting different needs.
10 And there are a lot of different needs. There are
11 a lot of competing interests.

12 The solicitors have their needs and they've
13 got to deal with victims and law enforcement and
14 schedules and budgets and all of the many things
15 they've got to deal with.

16 You've got defense lawyers that are too busy.
17 Their plates are heaped full and they've got judges
18 and solicitors calling them for cases that -- and
19 they thought they were going to be in 85 other
20 different places.

21 And you've got the needs of the court system
22 to know that matters are proceeding in an
23 appropriate fashion. We are very sensitive to the
24 number of days that people are in the jail, that is
25 extraordinarily expensive. Aside from the human

1 cost for the people who are -- who have their
2 freedom taken away.

3 So there's a tremendous amount of pressure, I
4 think, in every part of our -- of our system and I
5 would like to be a part of having a resolution to
6 it. I know that there have been case management
7 orders that have gone out, but they've gone out on
8 an ad hoc basis. And people who do criminal
9 defense work that's got to be pretty difficult to
10 figure out from this county or from this circuit to
11 that circuit what the rules are. I know that we
12 used to say when I practiced law, just tell me what
13 the rules are. I'll follow them, but just tell me
14 what they are. But it seems to me that with an eye
15 towards an understanding that what will work in
16 Charleston, and in Columbia, in Greenville, is not
17 going to work perfectly in Dorchester, or
18 Orangeburg or Calhoun just from the difference of
19 the demands and of the dockets.

20 So what I would love to do is I would love to
21 be a part of that. I'd love to be a part of
22 bringing that to a conclusion. And the reason that
23 I think that I can do it has to do with the fact
24 that I've been on the bench for a long enough time
25 that I've had the ability to be in an awful lot of

1 counties of South Carolina and worked with awful
2 lot of the solicitors and I just like -- as well as
3 the defense bars, but I'd just like to have an
4 opportunity to bring that to conclusion. I think
5 that's a tremendous area that needs completion.

6 **Q. And I agree with you. There's no question that**
7 **needs to be kind of, you know, resolved once and**
8 **for all, I guess at least it's going to change;**
9 **it's a dynamic. I mean, the legal system is a**
10 **dynamic system so it's not ever going to be all the**
11 **way there, but clearly it needs to be sort of**
12 **cleaned up and finished off; I agree with that.**
13 **But I guess I'm hearing you say on the one side the**
14 **rules should be uniform, but on the other side to**
15 **say well the rules can't be uniform. I'm a little**
16 **confused on which one is it. I mean you said you**
17 **wouldn't -- I mean, I get it, I hear what you're**
18 **saying, but I'm just -- you kind of left me there.**

19 **A. Well, in other words, there ought to be a structure**
20 **that has the ability to expand or contract as it**
21 **needs to. In other words, I think that solicitors**
22 **ought to be given the ability up to a point, maybe**
23 **a point in time to do their thing.**

24 **Q. Let me ask you and I am with you, but I want to**
25 **follow up on that because that's one of the reasons**

1 I think Langford has remained unresolved --

2 A. Yes.

3 Q. -- is because the court says on one hand the
4 solicitor controlling the docket in any way is
5 unconstitutional. And then on the other, you know,
6 in the very first order they try, which was kind of
7 a mess, but it was. I mean the bench -- the --

8 A. It was.

9 Q. -- the bench came back and said we can't do this,
10 I mean, this just won't work. But the first order
11 they issued made solicitors control up to a point,
12 which was very challenging as a lawyer. I'm
13 reading it and going well which one is it? I mean
14 either the solicitors have, you know, some level of
15 control or its unconstitutional and we don't have
16 any level of control. And I mean, I don't think
17 that's the right answer, I guess. I mean, I know
18 what I -- I've got strong opinions about what I
19 think some of the right answers are, but how -- how
20 would you reconcile that?

21 A. How you act -- it's -- well let -- let me give you
22 an example on the civil side. On a civil side
23 you've got a clerk and you've got Rule 41 and
24 you've got benchmarks. And the clerk works with
25 those benchmarks but the -- the judge is always

1 there. If there's a case for whatever reason needs
2 special attention we have the complex case
3 designation that we work with. If for whatever
4 reason there are more difficult issues, if
5 something needs to be expedited for whatever
6 reason, the judge is there. The judge is involved.

7 And so it -- I don't -- and there is --
8 driving under suspension as opposed to a murder
9 case, those are vastly different. In other words
10 is it more expeditious to have a solicitor in an
11 ability with -- with the ability to press that one
12 along in a more quickly basis. PTI, for example,
13 does the judge need to be at all involved for the
14 PTI? Of course not. But there's so many of those
15 areas on -- particularly on the smaller cases where
16 does the judiciary need to inject itself in those
17 cases or the systems that the solicitor already has
18 in place that is already expeditious with those
19 kinds of cases, do we leave that as it is? With it
20 -- with the court there as an overseer, if you
21 will, why wouldn't that work? When you get to
22 cases -- when you know you've got a murder case or
23 you know you've got a murder case with six
24 defendants, why then wouldn't the court be more
25 involved at the beginning of that case to be sure

1 counsel is appointed, the discovery is proceeding.
2 You know, sometimes solicitors even have
3 difficulties getting discovery from law enforcement
4 and sometimes they need a little bit of help.
5 Maybe on those kinds of cases the, you know, and
6 I've even thought about the level, is it -- when
7 you reach the serious or most serious cases, when
8 you reach a particular punitive time of potential
9 incarceration, with a court at that point becomes
10 more involved on the front end to be sure that that
11 case is proceeding as it ought to and to be sure
12 that when there are needs that if a defense bar
13 needs or defense counsel needs or the state needs
14 in terms of judicial support hearings, scheduling,
15 whatever that might be, the signing of the orders,
16 finding orders, whatever, stand your ground
17 hearings then in those instances you've got your
18 Chief Administrative Judge in your circuit that's
19 able -- that is in it early on and can watch that
20 case and can be much more involved in that case on
21 the front end.

22 Now, do you need the court involved in the
23 smaller cases, in the driving under suspension
24 third, not necessarily so. But -- but all of those
25 things are important. Sometimes the relationship

1 even between defense counsel and defendants,
2 depending on the -- particularly depending on the
3 seriousness of the case, that can be a dynamic
4 relationship that could, I think, benefit from
5 having sometimes judicial input on the front end
6 rather than just before they go to trial and all of
7 a sudden the defendant falls out of love with their
8 lawyer and that's a problem riding the tail end.

9 I mean, in other words, there are so many
10 different issues and obviously there are really
11 different potential solutions, but I do think that
12 it does -- we need to come to that point.

13 **Q. Finally, aside from funding and Langford, are there**
14 **any recommendations that you would have for the**
15 **General Assembly? Any holes, things that you'd**
16 **say, you know, this is something that you men and**
17 **women really should consider enacting; what would**
18 **be your thoughts on that?**

19 **A.** Thank you for that one. I have another little
20 project and it may just be a little project, but it
21 -- I'm -- I'm fascinated by the reality that we
22 already have a lot of infrastructure that exists in
23 our system, in our judicial system. And I am
24 fascinated by the possibility is there a way to use
25 existing infrastructure in a different way to make

1 our system more efficacious and maybe more
2 beneficial to individuals.

3 Let me give you an example that I'm absolutely
4 fascinated by this prospect and I actually talked
5 to the folks a little at probation and parole. One
6 of the things that I have learned is that when
7 young people, and this is particularly applicable
8 to young people, and I'd say that in the ages of 17
9 to maybe 23, and one of the things that I have
10 noticed if those young people are charged with a
11 crime, I'd love to be able to save those people for
12 thousands of reasons, but I'd love to be able to do
13 that.

14 One of the methods that I have noticed, and
15 this is anecdotal, I have no research and I wish I
16 did, but it's only anecdotal, but one of the things
17 that I have noticed is that if you can get those
18 young people home, and if you can get whoever in
19 their world as an authority figure, be it a mom or
20 dad or grandmother or grandfather or uncle or aunt
21 and if you can find somebody who cares about that
22 person and you can help that person get back in
23 control of that young person it can make a
24 difference. And one of the things that I've done,
25 one of the things that I have used is the ankle

1 monitoring. In other words, I'm lower on the bond
2 because I know they've got the expense of an ankle
3 monitor. And what those -- what those adults were
4 able to do is they're able to use Judge Goodstein
5 as the hammer for that young person and put them
6 under curfews and bring them home, bring them back
7 under the umbrella of the people who love them.
8 And let me be the hammer, I don't mind.

9 Well, what I have learned is, is that those
10 ankle monitors and the bondsmen are real expensive
11 and it becomes really tough on families to be able
12 to do that. Well, you know, we have Jessie's Law.
13 We already have the infrastructure. We already are
14 tracking people. We are already -- probation and
15 parole is already doing that and those ankle
16 monitor things are not that expensive. Those
17 individual things are not that expensive.

18 So what I have found to be a fascinating
19 possibility is could we -- could we have probation
20 and parole, that already have that infrastructure,
21 invest in a few more ankle monitors and allow the
22 folks in probation and parole to provide that ankle
23 monitoring service for a reduced price from what's
24 being charged now by some of the bonds folks. A
25 lot of them don't want to fool with it. And yet

1 that then becomes a money maker. It becomes an
2 income producer for the state. And with that money
3 then all kinds of things could -- could be done.
4 So it's sort of a win/win situation. I am
5 fascinated by that.

6 **Q. Thank you, Judge Goodstein. Appreciate it.**

7 **A. Certainly.**

8 CHAIRMAN CAMPSSEN: All right. Any other
9 questions? Senator Malloy.

10 SENATOR MALLOY: I'd like for you to go
11 because you do a better job than me.

12 EXAMINATION

13 (By Chairman Campsen)

14 **Q. Judge, I just have a series of questions I'm asking**
15 **essentially all candidates for the Supreme Court**
16 **anyway.**

17 **And I guess the first question is, do you**
18 **believe that the Supreme Court has the power to**
19 **order remedial legislative action in order to**
20 **satisfy your case or controversy brought against --**
21 **that's brought against the state? Can the court**
22 **order remedial legislative action to satisfy a case**
23 **brought against the state?**

24 **A. No.**

25 **Q. Why not?**

1 A. Separation of powers. The Federalist Papers, back
2 to it.

3 **Q. Okay. Do you believe that the duty of the Supreme**
4 **Court is to interpret the words of the Constitution**
5 **only according to the meaning they had when the**
6 **Constitution was adopted?**

7 A. No, I don't.

8 **Q. Elaborate.**

9 A. Yes. The easiest one to look at is the Second
10 Amendment. Back to the time when the Constitution
11 was enacted as well as the Bill of Rights, they had
12 muskets. They had muskets and little balls filled
13 with powder. And so if we're going interpret it
14 from that I -- it -- I -- it's more alive than
15 that. It is more flexible than that, I believe.
16 And so while I think that -- I think you look to
17 the intent. When you look to the intent of the
18 framers and you look to the intent of the framers
19 as it would relate to where we are today. In other
20 words, there was an overriding concern for the
21 justice for all people. And obviously, at the
22 time, for example, of the enactment of the
23 Constitution a third of our people were not
24 considered to be people. And so you couldn't see
25 it that way. Justice for all men means justice for

1 everyone, black, white, yellow, brown. So of
2 course, it can't be lived only through the eyes of
3 the framer. The intent, yes. For there to be
4 justice for all means all. As it goes forward, of
5 course, emancipation of our African American
6 brothers and sisters have been -- in 1860 and
7 therefore it does grow, it is applicable. And the
8 theories, the wants, the desires, the reasons for
9 the enactment of -- while those are certainly what
10 you look at, you can't look at it in a vacuum of
11 what existed back in the 1780s, for sure.

12 **Q. Which didn't the Civil Amendments take care of that**
13 **issue that you just raised --**

14 A. Well --

15 **Q. -- the 14th and others?**

16 A. Well, if we were to do that then -- then there
17 wouldn't be equality arguably for women because the
18 Equal Rights Amendment failed. So I would submit
19 that in reality this document is based on the best
20 and the brightest thoughts and theories and wants
21 and desires of a society that are still viable
22 today. So I think it absolutely can be interpreted
23 to be applicable today and I don't think you look
24 at it as a stagnant document from that period.

25 **Q. What is your opinion of the types of policy matters**

1 **that are nonjusticiable political questions?**

2 A. Would you run that by me one more time?

3 REPRESENTATIVE SMITH: I don't understand
4 that question either.

5 CHAIRMAN CAMPSER: I redirect that to
6 Representative Rutherford.

7 **Q. What is a nonjusticiable political question, is the**
8 **question. What types of things are nonjusticiable**
9 **political questions, questions that a court can't**
10 **reach because they're appropriately left to the --**

11 A. Oh, got you.

12 **Q. -- branch --**

13 A. Absolutely.

14 **Q. -- that resolves political questions?**

15 A. Ecclesiastical determinations comes to mind. And
16 of course there was women involved in this body
17 too. That the Segars-Andrews matters really rose
18 out of this body, but in my perspective I have
19 struggled in the -- a year ago with the Episcopal
20 Church dispute. And if it is ecclesiastic and it
21 is based upon -- it is ecclesiastic law, it
22 involves an ecclesiastic matter, it is hands off.
23 And sometimes while that doesn't feel particularly
24 comfortable and you worry that you're leaving
25 people in the -- in the area of dispute, that is

1 our law.

2 **Q.** Thank you. Okay. I don't think I've asked this,
3 tell me if I already did because I'm asking, like I
4 said, to everybody I can't -- do you believe that
5 the Supreme Court has the power to order remedial
6 legislative action --

7 **A.** Well, I did that.

8 **Q.** -- I already asked that one.

9 **A.** Yeah, that was a toughie.

10 CHAIRMAN CAMPSSEN: All right.

11 That's all the questions I have. I
12 redirect that one to Representative
13 Rutherford.

14 JUDGE GOODSTEIN: And I'll be happy
15 to yield.

16 CHAIRMAN CAMPSSEN: All right.
17 Representative Murrell Smith.

18 REPRESENTATIVE SMITH: Thank you, Mr.
19 Chairman. And Mr. Chairman, let me say the
20 good news of you being Chairman and asking
21 those questions is we know Representative
22 Rutherford will never run for a judge.

23 CHAIRMAN CAMPSSEN: That's right.
24 (Laughter.) That would be my ultimate goal.

25 REPRESENTATIVE SMITH: So you're

1 succeeding. Congratulations, your first
2 success as Chairman.

EXAMINATION

3
4 (By Representative Smith)

5 Q. Judge Goodstein, good afternoon. Let me -- same
6 question I've asked Judge Anderson and I'll direct
7 to you. You mentioned earlier about lawyers having
8 85 different places to be and it seems to me that
9 as we're trying to be more efficient in court,
10 trying to dispose of cases that is kind of
11 intersected and conflicting with lawyers being able
12 to practice and have some sort of quality of life.
13 And that's very concerning to me. I know -- and
14 maybe to some others around here, but, you know,
15 what I'm seeing is more of a push from the court
16 for disposition of cases more than trying to get
17 lawyers to move cases in a timely manner with, you
18 know, we've -- looking from the Magistrate Court to
19 the DUIs to dealing with a number of issues. I
20 know Court Administration calls you judges often to
21 tell you that these cases have been pending over a
22 year -- 18 months to 2 years and they need to get
23 disposed of.

24 And I, you know, part of what the Supreme
25 Court does is that they also regulate the practice

1 of law. And they also administer the courts around
2 the state and one thing that struck me, we were
3 talking earlier, is I notice that the bar proposed
4 gaining basically orders of protection via the
5 Supreme Court instead of me having to write every
6 circuit that I'm practicing in and that concept was
7 rejected and I don't know for what reason it was
8 rejected by the court. But those are, you know, if
9 you are on the Supreme Court tell me how you would
10 balance the need for efficient litigation and
11 disposition against lawyers quality of life?

12 A. That's an interesting question. I will tell you
13 one of the things that I do and I have done this
14 ever since I've been on the bench. Well, I've --
15 maybe not ever since because you got to get your
16 feet wet and figure out what in the world you're
17 doing first, but it was probably a couple years
18 after I had been on the bench and I have a policy
19 and it is my policy.

20 And we use to have the big docket meetings and
21 in the docket meetings I used to announce this to
22 lawyers. And when I have a chance to talk to
23 lawyers I'm real careful to tell them this because
24 this is what I believe about lawyers. I do not, as
25 a matter of course, I do not ever deny a lawyer

1 vacation. In fact, what I tell lawyers when I have
2 the chance to speak to groups is that they are
3 under too much pressure. They are doing too much
4 and that so often they take care of everybody else
5 except for themselves.

6 And it is my policy and it has always been my
7 policy that lawyers don't take enough time for
8 themselves, which also means their families. And I
9 am a firm believer and one of the things that I do
10 is that I am one of those people that always, if it
11 comes to a lawyer and it comes to a need for a
12 holiday, a break, vacation, a child's soccer game
13 tournament on the -- I -- I'm -- lawyers work
14 really, really hard. They are under incredible
15 pressure. The suicide rate of lawyers is way too
16 high. And if the -- if there's anything that I can
17 do to lift that burden it's to have that very small
18 policy and that is you want to go away, you're
19 going away. And it has always been my policy. I
20 don't think lawyers take enough time. I think it's
21 -- I think it's incredibly stressful and one of the
22 things that I preach to them is to do that, is to
23 take more time away. They need it because it, you
24 know, if it was easy everybody would do it, but it
25 is a very difficult choice of lifestyle.

1 So that -- so do I think that you ought to
2 have a methodology where when we get it for one
3 Chief Administrative Judge it applies to all,
4 absolutely. And let me tell you something, I've
5 had many a day when there's been a lawyer that's
6 been going through whatever they may be going
7 through and I've told them -- I've called them and
8 I've told them, if you need me to make a phone call
9 to be sure that your message is getting heard, I'll
10 do it. I'm -- because I don't think you ought to
11 have to do that. I mean, I just -- it's too much.
12 It's too much to do.

13 I think there ought to be -- you know, we're
14 so -- we're so connected electronically it seems to
15 me there ought to be some general notice that so
16 and so is protected. One Chief Administrative
17 Judge on that particular week or -- and therefore
18 it's applicable to everybody. Why wouldn't it be?
19 Why wouldn't we do that?

20 **Q. I appreciate that answer. You spend so much time**
21 **trying to get protection from Magistrates Courts or**
22 **Family Courts or different circuits it's almost --**
23 **I'm just amazed that we can't find a central**
24 **location where --**

25 **A. Well --**

1 Q. -- lawyers can go and get protected and go away.

2 A. Well, I'm certainly willing to work on that because
3 I'm a firm believer that lawyers need -- they need
4 that.

5 Q. Not to rehash some of the Langford discussion you
6 had with Senator Hembree, but one -- one issue that
7 I found and I think you touched on it a little bit,
8 I notice more and more General Sessions, non-jury,
9 terms of court, and supposedly that's where we can
10 deal with discovery issues, we can deal with
11 outstanding issues prior to trial or other motions
12 that need to be heard.

13 But, you know, I think if I've heard once I've
14 heard it a hundred times, "Well, judge that's going
15 -- that's something we're going to need to take up
16 pretrial when the jury is struck" are issues. And
17 I guess, how do you balance trying to get some
18 disposition of issues in a criminal case with
19 having those heard prior to the common -- prior to
20 the case being called to trial because that can
21 resolve a lot of issues and, you know, those -- if
22 those -- depending upon if it's a search issue, is
23 that going to deal with if it's denied and then
24 trying to determine whether they need to plea or
25 not. I mean those are issues that I see that we --

1 **we try to set up a mechanism, but I'm not so sure**
2 **it's succeeding in the manner it's set up.**

3 A. I tend to agree with that too. I'm not so sure
4 that -- that -- and I don't know that this is true
5 again in the centers as it is in places like
6 Dorchester County. Does Dorchester County need a
7 full week of criminal non-jury and the answer is
8 "Oh, no, goodness no." And if we're not able to
9 flip into taking pleas and that really is a lot of
10 waste of time to be honest. And thank goodness our
11 Solicitor's Office is organized enough that we're
12 able to make good use of that time and taking
13 pleas, but in the smaller counties you just don't
14 need that much time.

15 I agree with you completely and the -- one of
16 the real benefits -- one of the real benefits is if
17 only several days out before you begin a trial, if
18 you can get those -- if you can get those pretrial
19 motions heard it is -- it's terrific, it's
20 extraordinarily helpful. And certainly one of
21 things that I like to do for exactly the same
22 reasons that you're saying because based on the way
23 the Jackson v. Denno hearing comes out or based
24 upon the way the suppression hearing is going to
25 come out or the stand your ground, which we know

1 you have to do in advance. We know that. Then
2 that -- that can go a long way to helping work out
3 a plea or in the event of a successful stand your
4 ground the case away in its entirety. I agree with
5 you completely.

6 I think this -- I think that there is -- I
7 think that the idea behind it is legitimate,
8 thought provoking. I'm not so sure that the
9 execution of that doesn't need a little bit of
10 tweaking though.

11 **Q. And I say this with all due respect to the courts**
12 **and all that because I don't know how the courts**
13 **are operating over there and I certainly -- just**
14 **like we believe the court should respect the**
15 **legislative separation. Also, I'm a big believer**
16 **that the legislature needs to respect the court**
17 **separation and so I'm not doing it.**

18 But what I am concerned about is it seems to
19 be sometimes you talk to Circuit Court judges or
20 you talk to attorneys who know -- are on the ground
21 operating the courts or family courts -- and the
22 family courts. And it seems to be some of the
23 complaints are -- seem -- are similar that I
24 continue to hear about we need to improve this, we
25 need to improve that and I wonder where that

1 breakdown of communication occurs between Sumter
2 Street and the courtrooms across the state because
3 I hear similar complaints from numerous judges as I
4 go around the state and involved, you know, issues
5 and cases around the state and from attorneys too
6 and it seems like there needs to just be some more
7 attention paid to the -- to the trial court level
8 in ways to modernize efficiency which would prove
9 successful rather than what we've had over the past
10 few years. I have just -- I've seen things that
11 occur that people just scratch their head and don't
12 understand it and it's not reality of what's going
13 around the courtrooms in the state.

14 A. Well, let -- I -- I concur on -- and I think that,
15 again, with how my experience could be beneficial
16 is that I've been in about every courtroom and in
17 about every issue and in just about every
18 circumstance. So obviously, I would crave an
19 opportunity to be a part of that.

20 REPRESENTATIVE SMITH: Thank you.

21 REPRESENTATIVE BANNISTER: Any other
22 questions? Mr. Hitchcock.

23 EXAMINATION

24 (By Mr. Hitchcock)

25 Q. Good afternoon, Judge Goodstein. How are you

1 doing?

2 A. I'm well. How are you?

3 Q. Very good.

4 A. Wonderful.

5 Q. In an earlier answer to Senator Campsen's question
6 in regards to the court being able to order
7 remedial legislative action, I think you said that
8 the court would be precluded from doing that by the
9 separation of powers. I just want you to think
10 with me for a minute. There's -- you know, I --
11 the law is well settled that the Constitution is
12 not a -- it's not a grant, but rather limit on the
13 General Assembly's authority.

14 But there are certain instances where the
15 state constitution requires the General Assembly to
16 perform some type of duty or function and along the
17 lines of your answer to Senator Campsen's question,
18 in those instances where the constitution provides
19 or requires the General Assembly to take some type
20 of action. When the court is reviewing that is the
21 court then limited to just really saying whether or
22 not that a constitutional violation has occurred or
23 can the courts prescribe the remedy or require the
24 General Assembly to take some type of action in
25 order to fulfill that duty?

1 A. This is -- this would be my belief. I believe that
2 the court has plenty of authority and plenty of
3 power in making a determination whether an action
4 taken by the legislature is constitutional or not.
5 Now is it -- is -- you know, are we jury or de
6 facto discriminatory, are we, you know, is it -- is
7 it on all fours for the Constitution or not? Is it
8 violative of the Constitution?

9 Where I take issue is -- would be for the
10 judiciary saying to the legislature that you must
11 pass a piece of legislation that does X, Y and Z.
12 I think that that impinges upon the separation of
13 powers. I think that it is -- I think -- let me
14 say this, I think that there are decisions that can
15 be issued by the Supreme Court that put and can put
16 a tremendous amount of pressure -- encouragement, I
17 should say, encouragement, perhaps to pass certain
18 legislation. That, for example, you know, this is
19 the result in which you have so long as the
20 legislation reads this way. This is what we'll --
21 let me give you an example. Let me give you an
22 example. And this is not the state of the law.
23 This is not the state of the law, but I would -- I
24 needed to give you an example of what I'm talking
25 about.

1 Let's say that -- that the statute on DUI,
2 let's say that, that statute said, if you cannot
3 see every single part of a person's body and see
4 every single solitary part of the roadside tests.
5 If you can't hear Miranda, if you cant see it, hear
6 it, feel it, that the DUI has to be dismissed.
7 Okay. Let's say that that's the statute as
8 interpreted by the court.

9 Well, here's what happens, all the DUI cases
10 all over the state begin to get dismissed and all
11 of the sudden what then happens in a society is
12 all those organizations that are so worried about
13 driving under the influence, people drinking and
14 driving. With all of those convictions then begin
15 to be dismissed because that's the interpretation.

16 What the court is not doing is saying, you got
17 to change this statute to read this way. What the
18 court does is say that because the statute reads
19 this way, it is interpreted in this manner and
20 therefore this is the result which will occur.

21 Well that, I think, puts a tremendous amount of
22 pressure on the legislature to maybe change that
23 statute, maybe not, but maybe change that statute.

24 I think that's the way it's supposed to work.
25 I do not believe it is appropriate for the court to

1 say because we are going to be dismissing all of
2 your DUI cases you got to change this legislation
3 to read this way and do this or -- here's a
4 suggestion for your legislation.

5 I think that the court needs to remain within
6 the interpretation, but it can be the consequences
7 then that can put -- obviously, can put pressure on
8 the legislature perhaps to do certain things or
9 not, but I don't believe that it is appropriate for
10 the court to dictate legislation to the General
11 Assembly.

12 CHAIRMAN CAMPSEN: Thank you. Senator
13 Malloy.

14 SENATOR MALLOY: Thank you, Judge.

15 EXAMINATION

16 (By Senator Malloy)

17 **Q. How you doing today?**

18 **A. I'm find. How are you Senator?**

19 **Q. Good. So I'm curious as to one of the things I**
20 **have a little bit of peeve about is to the fact**
21 **that our court has to come over here to lobby for**
22 **funding. And one of the questions I have is to see**
23 **if you have any thoughts or opinions as to how we**
24 **could do the funding differently, i.e. a percentage**
25 **of the general appropriation budget. So that you**

1 **don't have to do it and don't necessarily have to**
2 **rely on fees and fines and those kinds of things.**
3 **That's my first question.**

4 A. I think so. I think that there needs to be a
5 funding source that naturally as our population
6 expands, then the need for the judiciary obviously
7 is going to expand. And I believe that the core
8 expenses for the judiciary ought to be covered in
9 that fashion. And obviously if there's
10 extraordinary expenses that exist for whatever
11 reason, those would be addressed perhaps
12 separately. But I do believe that the core
13 expenses, which are salaries and then we have very
14 little other than salaries, that those ought to be
15 covered in a consistent way. And it ought to be
16 tied to a percentage -- some sort of percentage of
17 a consistent funding source.

18 **Q. Okay. And the question I ask the last applicant**
19 **too was that -- of course he's never been on the**
20 **bench, but have you ever had a death penalty case**
21 **in front of you --**

22 A. Uh-huh.

23 **Q. -- judge alone?**

24 A. Yes.

25 **Q. Without a jury?**

1 A. Yes.

2 Q. Okay. And how many times do you think that's
3 happened?

4 A. I have tried one to a jury trial. I've had many,
5 often times they plead, but I have, it was State
6 versus Justice, an interesting name. And it was
7 tried to me, yes.

8 Q. It was tried to you directly?

9 A. Yes.

10 Q. And you had the opportunity to impose the death
11 penalty --

12 A. Yes.

13 Q. -- or life sentence?

14 A. Yes.

15 Q. Which one did you impose?

16 A. Death.

17 Q. Okay. And so that person had waived his right to a
18 jury?

19 A. He did.

20 Q. Okay. And the next question is that, I guess, the
21 thing I asked him is that if there is a time
22 whenever, not as a judge, that they had an official
23 stance on the death penalty?

24 A. I'm sorry?

25 Q. There was a time whenever, not as a judge, as an

1 individual did they made a stance on the death
2 penalty, has it ever had to come to you an occasion
3 where you had to make a decision on -- or you made
4 a decision and made it public on stance on the
5 death penalty?

6 A. In other words, have I had any conversations or
7 written or anything or made any statement about the
8 death penalty per se? No, sir.

9 Q. Okay. The -- I think the Langford question has
10 been handled some by the Senator from Horry. I
11 think the other question I had was, do you believe
12 that the Supreme Court has the power to issue a
13 writ of mandamus against the General Assembly or a
14 member in order to get the legislatures to perform
15 a certain action?

16 A. Maybe. Let me give you an example. Let me give
17 you an example. You know, I followed out of
18 curiosity, as I'm sure did everyone, about the
19 clerk of the state grand jury administering an oath
20 to the members of the Solicitor's Office so that
21 those members of the Solicitor's Office could
22 receive certain information to continue to support
23 the solicitor with an investigation. So I -- I'm -
24 - and -- and so that was a writ of mandamus that
25 was requested.

1 Can I imagine that there could be a
2 circumstance wherefore whatever reason someone
3 needed to do something that's ministerial and it's
4 not happening for some particular reason and
5 therefore an actual writ of mandamus be requested
6 by the Supreme Court? I'm sure that you can
7 imagine a circumstance where that would occur.

8 **Q. And then -- well, I guess, specifically as to the**
9 **legislature?**

10 A. You can probably -- you can probably come up with
11 some theory. I mean I can't imagine -- and, you
12 know, I'm sitting here trying to imagine a
13 circumstance where that would occur. At -- I would
14 think it would be something similar that -- that
15 happened that because one faction didn't want
16 something to happen and therefore there was this --
17 something needed to occur where there needed to be
18 an oath that needed to be given by someone and that
19 person was refusing to do it and then that became a
20 cog in the wheels of the legislature being able to
21 do what it was supposed to do. I can imagine that
22 -- that you would go to the court and ask the court
23 to mandamus that particular person to do that
24 ministerial thing that wasn't happening because
25 they favored one side or the other. I mean I --

1 Q. But not against the legislature itself?

2 A. I'm sorry.

3 Q. Not against the legislature itself?

4 A. Now, that I have very difficult -- I have a very
5 difficult time imagining that.

6 Q. Okay.

7 SENATOR MALLOW: All right. That's all I
8 have.

9 CHAIRMAN CAMPSEN: Okay. Any other
10 questions?

11 MR. HOWARD: One.

12 CHAIRMAN CAMPSEN: Mr. Howard

13 JUDGE GOODSTEIN: Please don't ask me how
14 many s'mores I had.

15 MR HOWARD: I will say that I did see
16 Judge Goodstein over the weekend. She
17 introduced herself to me, that's about it.

18 JUDGE GOODSTEIN: It was over s'mores.

19 MR. HOWARD: Exactly.

20 EXAMINATION

21 (By Mr. Howard)

22 Q. Judge Goodstein, over the last -- recent history

23 we've had a very successful run in the state of
24 creating a very attractive business climate. I

25 represent a lot of companies and -- that have come

1 to the state, a lot of business interest. And I
2 see the court as playing an important role. But
3 what do you see as the court's role in creating and
4 maintaining an attractive business environment and
5 climate in South Carolina?

6 A. I think -- there are really two things that come to
7 mind. One thing that comes to mind that's pretty
8 exciting is that outsourcing is now becoming
9 insourcing because of the rule of law. In other
10 words, there are a number of companies that went to
11 China because -- they did it because they thought
12 labor was going to be very inexpensive. And now
13 they've come back to the United States because
14 guess what? They like the patent law in the United
15 States that's not honored in China. And I think --
16 I think Dow might have been one of those companies
17 that left China to come back to the United States
18 because of the rule of law.

19 I think it is incumbent upon the judiciary to
20 enforce the rule of law. You've got the -- a lot
21 of legislature pass as patent law incumbent upon
22 the judiciary to enforce that patent law. And so,
23 you know, when it comes to -- when it comes to the
24 beginning of a positive climb and this state has
25 done everything you could ask a legislature to do,

1 it certainly has done that. And I think it's
2 incumbent upon the judiciary to do a couple of
3 things.

4 Number one, to be accessible. Number one, to
5 be accessible because if you've got somebody
6 running away with something that's important to a -
7 - to a corporation or you have a -- a -- a -- a
8 court -- a split in a corporation. Maybe you're
9 having a -- you have divisiveness and it's -- and
10 it's having an effect on the operations of a
11 company, I think it's critically important that
12 they have access. And I think we have a sufficient
13 judiciary in a small enough state that ought be
14 there. That you are available. And I certainly
15 have been available to different entities when they
16 needed to search to see if they have an appropriate
17 circumstance say for a restraining order. You've
18 got to make yourself available for things like
19 that, you must. And I think that our judiciary
20 certainly has done that.

21 And also I think that the fact that we have
22 business court in this state, a very active
23 business court is important so that we have
24 committed the resources to have members of our
25 judiciary who are particularly keen to those

1 issues. I think that's important. I think that
2 ought to remain, if not, be expanded. And I think
3 it ought to be expanded to the family court, quite
4 frankly, where it doesn't exist now. I think to
5 have members of the family court who have
6 particular sensitivity and knowledge and training
7 with regards to business is very important as well.
8 I would love to have an opportunity to participate
9 in the implementation of that.

10 But I think that -- I think that it's
11 incumbent upon the General Assembly to legislate.
12 I think it is incumbent upon the judiciary to
13 enforce, to be available, and to be expeditious
14 with those determinations.

15 MR. HOWARD: Thank you.

16 CHAIRMAN CAMPSSEN: Any further questions?

17 (No response.)

18 CHAIRMAN CAMPSSEN: Okay, Judge Goodstein,
19 thank you.

20 SENATOR MALLOY: One last question.

21 CHAIRMAN CAMPSSEN: Senator Malloy.

22 SENATOR MALLOY: One last question.

23 FURTHER EXAMINATION

24 (By Senator Malloy)

25 **Q. One of things, Judge, that has occurred in our**

1 state is that we have a lot of split decisions and
2 we have had a lot of dissents over the last period
3 of time. Sort of an open ended question to give
4 you an opportunity to tell us how you would handle
5 it.

6 So we think litigants really want a clearer
7 picture of the law to lawyers and others it's
8 impacted by. So if you could just tell us what
9 circumstances you would feel it necessary to write
10 dissent or concurrence and what you would do to
11 help try to avoid split decisions so that you could
12 have some unanimous support on the court.

13 A. Absolutely. I -- let me say that -- when I was a
14 baby judge, when I was very new to the bench, at
15 our judicial conference in August, there was an
16 incredible talk that was given by then outgoing
17 Chief Judge of the Court of Appeals Alex Sanders.
18 And his words were, there ought never ever be a
19 split decision. The decision ought -- decisions
20 ought always to be unanimous. That is an
21 obligation that the judiciary owes to the people of
22 this state. And that you have to do what it takes
23 to reach it. If you have to study more, if you
24 have to confer more, if you have to hone in your
25 skills of convincing your fellow jurists that that

1 is the right path, that you owe it to the citizens
2 of this state to give them that clarity. And those
3 words have always remained with me.

4 **Q. And you've had an opportunity to sit on the Supreme**
5 **Court before. How many times; do you know?**

6 A. Probably -- oh, I'm, you know, I'm under oath and
7 I'm scared to say, maybe five or six times more --
8 I would say five or six times.

9 **Q. Okay. Thank you.**

10 A. Thank you.

11 CHAIRMAN CAMPSEN: Thank you. Any other
12 questions?

13 (No response.)

14 CHAIRMAN CAMPSEN: Okay. Judge
15 Goodstein, thank you for being with us today.
16 That concludes this portion of our screening
17 process. As you know, the record will remain
18 open until the formal release of the report of
19 qualifications and you may be called back at
20 such time if the need arises. I thank you for
21 offering and thank you for your service to
22 South Carolina.

23 JUDGE GOODSTEIN: Thank you so much.

24 CHAIRMAN CAMPSEN: And for the service of
25 your husband for --

1 JUDGE GOODSTEIN: Awww.

2 CHAIRMAN CAMPSSEN: -- Senator Arnold
3 Goodstein.

4 JUDGE GOODSTEIN: Thank you. Thank you
5 for that. Thank you so much, Senator Campsen.

6 CHAIRMAN CAMPSSEN: Thank you.

7 JUDGE GOODSTEIN: Thank you everyone.
8 (Candidate excused.)

9 CHAIRMAN CAMPSSEN: Judge James.

10 JUDGE JAMES: Yes, sir.

11 CHAIRMAN CAMPSSEN: Welcome.

12 JUDGE JAMES: Thank you for having me.

13 CHAIRMAN CAMPSSEN: Please raise your
14 right hand.

15 (The Judge was sworn.)

16 CHAIRMAN CAMPSSEN: Have you had an
17 opportunity to review your personal data
18 questionnaire and sworn statement?

19 JUDGE JAMES: Yes. Sir.

20 CHAIRMAN CAMPSSEN: Are they correct?

21 JUDGE JAMES: There's one addition, I
22 believe it would be postage for mailing
23 letters to, I believe, 152 members of the
24 legislature at 47 cents apiece. I think that
25 came out to \$71.44.

1 CHAIRMAN CAMPSSEN: Okay. So you are
2 changing that response --

3 JUDGE JAMES: Yes, sir.

4 CHAIRMAN CAMPSSEN: To reflect your --
5 your postage?

6 JUDGE JAMES: Yes, sir.

7 CHAIRMAN CAMPSSEN: Thank you. Do you
8 object to our making these documents and any
9 amendments, if applicable, part of the record
10 of your sworn testimony?

11 JUDGE JAMES: No, sir.

12 CHAIRMAN CAMPSSEN: Okay. It will be done
13 at this point in the transcript.

14 [EXHIBIT 17, JUDICIAL MERIT SELECTION
15 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
16 HONORABLE GEORGE C. JAMES, ADMITTED.]

17 [EXHIBIT 18, SWORN STATEMENT FOR THE
18 HONORABLE GEORGE C. JAMES, ADMITTED.]

19 CHAIRMAN CAMPSSEN: The Judicial Merit
20 Selection Commission has thoroughly
21 investigated your qualifications for the
22 bench. Our inquiry has focused on nine
23 evaluative criteria and has included a ballot
24 box survey, thorough study of your application
25 materials, verification of your compliance

1 with the state ethics laws, search of
2 newspaper articles in which your name appears,
3 study of previous screenings, check for
4 economic conflicts of interest. We have
5 received no affidavits filed in opposition to
6 your election. No witnesses are present to
7 testify.

8 Do you have a brief opening statement you
9 would like to make at this time?

10 JUDGE JAMES: No, sir, other than I
11 welcome the opportunity to be here. I'll try
12 to answer all of your questions as best I can.

13 CHAIRMAN CAMPSER: Thank you. Please
14 answer counsel's questions.

15 JUDGE JAMES: All right.

16 MS. DEAN: Thank you, Mr. Chairman.
17 I note for the record that based on the
18 testimony contained in the candidate's PDQ,
19 which has been included in the record with the
20 candidate's consent. Judge James meets the
21 constitutional and statutory requirements for
22 this position regarding age, residence, and
23 years of practice.

24 EXAMINATION

25 (By Ms. Dean)

1 **Q. Judge James, why do you now want to serve as a**
2 **judge on the Supreme Court?**

3 A. Well, I -- probably the best way to answer that
4 question is to give a little explanation of how I
5 got here.

6 I was in private practice for 21 years and I
7 quite honestly can tell you that while I was in
8 private practice it never entered my mind to --
9 that I would ever be a candidate for the Supreme
10 Court. When a lawyer is a lawyer, a lawyer is
11 typically concerned about what the law is whether
12 it's the code, evidentiary rules, procedural rules,
13 or case law. In preparation for the trial of a
14 case, for example, trial lawyers are primarily
15 concerned with those things.

16 I moved to the circuit bench a little over 10
17 years ago "the what the law is" still is important.
18 And you throw into that way of thinking the
19 discretion that a circuit judge or any trial judge
20 has in making rulings dealing with the docket,
21 dealing with administrative matters and things of
22 that nature. But over the last few years, probably
23 within the last three or four years when I was
24 reading appellate opinions, for example, I found
25 myself moving away from "Well, what is the law?"

1 And how did that circuit judge do something right
2 or do something wrong?" to more of an idea of why
3 the Appellate Panel in the case of the Court of
4 Appeals or why did the Supreme Court make a ruling
5 that it made?

6 And so as that time progressed I just found
7 myself thinking that it would be a good opportunity
8 to contribute to the overall judicial establishment
9 in this state to have a hand in that. And I just
10 found my focus changing and I found my way of
11 thinking changing.

12 **Q. Thank you, Judge. Judge James, how do you feel**
13 **your legal and professional experience, and of**
14 **course you kind of talked about that, if you'll**
15 **continue to expand that experience thus far will**
16 **assist you to be an effective judge on the Supreme**
17 **Court?**

18 A. Well, of course, I would incorporate what I just
19 said, but in 31 years, at least at the circuit
20 level, I've seen just about everything that there
21 is to see. Again, how a case is prepared for
22 trial. How lawyers prepare those cases. What's
23 going through the lawyers' minds. I've just about
24 seen it all and probably done almost all of that.
25 So I think that I'm very well prepared at least

1 mechanically. Intellectually I think I'm prepared
2 because I believe that if you ask just about
3 anybody they would say I'm a hard worker. I do
4 like to get it right within the law and I do go to
5 great pains to try to reach decisions that are
6 fair-minded and that keep in mind the rights of the
7 litigants and what the law actually is.

8 And to just -- to answer your question, I
9 believe that 31 years of experience and the things
10 that I've done is -- it speaks for itself.

11 **Q. Thank you, Judge. And, again, this might be**
12 **building on what you were just speaking about, but**
13 **could generally describe your judicial philosophy?**

14 **A.** Well, I remember the -- my investiture back in
15 2006, where I promised that I would be fair. That
16 doesn't mean that people always get the results
17 that they want. Everybody is entitled to a fair
18 hearing, that's the -- what basically what due
19 process is.

20 My judicial philosophy is not to play
21 favorites, whether its plaintiff/defendant, state
22 or defendant in a criminal case. I try to boil
23 down -- it might be one of my faults but my
24 judicial philosophy is to try to boil things down
25 to their simplest terms and make rulings based on

1 what the nuts and bolts of the law actually are as
2 opposed to backing into a decision that one might
3 want just looking at an issue at first blush.

4 So my -- my basic philosophy is to keep it
5 simple and try to boil things down to what the --
6 again, the nuts and bolts are and I think that if
7 you're able to do that, the decision will be right
8 even though you're going to have someone who's not
9 pleased with it.

10 **Q. Thank you, Judge. What is your vision for the**
11 **future of our judicial system and what changes**
12 **would you advocate and why?**

13 A. Well, I don't know whether I understand your
14 question entirely. But technology rapidly
15 advancing the -- Third Circuit where I'm from
16 Sumter, Lee, Clarendon, Williamsburg was the First
17 Circuit to undergo electronic filing. I see that
18 the future -- in the Appellate Court system that's
19 come. I think by the end of 2018, all of the
20 circuits in this state will have electronic filing,
21 that's going to be a reality. So whether that's a
22 vision or a reality I don't know.

23 My vision as a judge or a citizen might
24 differ. But my vision for the judiciary in the
25 future is going to be one that is going to be

1 dealing with a lot of technological advancements
2 whether you're talking about Fourth Amendment or
3 whether you're talking about how technology is
4 applied in the courtroom. Whether or not you're
5 talking about evidentiary expansion or rules of
6 evidence that take into account what -- how
7 technology has advanced.

8 But I don't know whether I have a firm answer
9 on what my vision is. I don't think my vision
10 really makes a difference. I think it should be a
11 consensus built amongst legislature and the
12 judicial branch as to what the future holds for the
13 judicial system.

14 **Q. Thank you, Judge. Judge James, to what extent do**
15 **you believe that the judge should or should not**
16 **defer to the actions of the General Assembly?**

17 A. Well, the legislature powers are plenary, at least
18 it was afforded to the legislature in the
19 Constitution. We have three branches of
20 government.

21 I've heard it explained, I think, it might
22 have been James Madison, it might have been Justice
23 Kittredge, I can't remember who, the walls between
24 those three -- the walls between those three
25 branches are there. I think that judges can maybe

1 climb to the top of the wall and peep over, that
2 might be allowed to walk around once in a while in
3 the other arena, but I'm one that has no interest
4 in barging in on another legislative -- or excuse
5 me, another branch of government's prerogative.

6 **Q. Thank you, Judge. Moving now to the ballot box**
7 **questions. The Commission received 393 ballot box**
8 **surveys regarding you with 76 additional comments.**
9 **The ballot box survey, for example, contained the**
10 **following very positive comments such as, even-**
11 **handed, excellent temperament, fine gentleman;**
12 **excellent jurist. Only eight of the written**
13 **comments express concerns. Of these eight some**
14 **express concerns regarding your temperament. What**
15 **response would you offer to this concern?**

16 A. You said eight?

17 **Q. Eight total that were negative and of those eight a**
18 **few included temperament concerns.**

19 A. Well, I certainly do take those comments to heart.
20 I don't know what they were specifically, but you
21 did review those with me a few weeks ago. Context
22 is everything. Certainly, I try to conduct myself
23 as best I can to make sure that every litigant is
24 afforded a full and fair opportunity to make their
25 arguments and to air any grievances that they might

1 have.

2 As far as temperament being lacking on certain
3 occasions, as I mentioned a moment ago, context is
4 everything. I do not know whether it might have
5 been a situation where I truly did not live up to
6 the standard of possessing the right temperament at
7 the right time. Or it could have been a lawyer
8 that I had to call down perhaps for interrupting or
9 being late or not alerting me to an issue by a
10 certain deadline.

11 Everybody who hears that criticism has to take
12 it to heart. The only thing I can tell you is that
13 every day when I walk into a courtroom, or have a
14 status conference, or answer an email, or even
15 talking on the phone, I try the best I can to make
16 sure that I don't leave anybody with that
17 impression.

18 **Q. Thank you, Judge. The other concern that was**
19 **raised is -- one that you've already addressed**
20 **some, but if you could talk about your experience a**
21 **little bit more, that was a concern.**

22 A. Okay. Experience?

23 **Q. The level of experience you have, yes, sir.**

24 A. Well, 10 years on the circuit bench, it's no secret
25 that in this day and age less civil cases are tried

1 to verdict that there used to be. In my 21 years
2 of private practice it was not unusual to go to a
3 roster meeting on a Monday with 8 or 10 files when
4 you might be up on any of those, it's not the way
5 it is anymore. But during those 21 years I learned
6 everything that there was to learn about trying a
7 civil case. From the pleading stage, discovery,
8 all the way to verdict, post-trial motions.

9 If there were, in any given circuit, a 100
10 cases tried in a year, there would probably be 90
11 to 95 of those would be criminal cases. When I
12 went on the circuit bench I had very little
13 experience in that area. But over the last 10 plus
14 years I gained a lot of experience. Anywhere from
15 the Rules of Evidence to the Rules of Procedure I
16 -- my knowledge in those areas is solid.

17 As far as appellate experience, guilty as
18 charged. I don't have any appellate experience,
19 but I believe the 31 years in this arena at least
20 gives me the footing to move forward with an
21 appellate judgeship.

22 **Q. Thank you, Judge. Moving now to -- back to your**
23 **PDQ. You mentioned in your PDQ that a lawsuit was**
24 **filed against you by Mr. McWaters?**

25 **A. Yes.**

1 Q. Could you please just explain the nature of that
2 and the disposition of the case? I believe it is
3 --

4 A. Judge --

5 Q. -- been dismissed.

6 A. -- Judge Alison Lee and Master-in-Equity, Jimmy
7 Spence from Lexington, and I were named as
8 defendants in a case by Mr. McWaters. My role in
9 that case was I denied -- well, I granted an Order
10 of Reference to the Master-in-Equity and that was
11 the basis for the lawsuit that my ruling was
12 improper. It was dismissed very soon after the
13 case was filed. And, as a matter of fact, I saw
14 Mr. McWaters the other day in Richland County in a
15 motion term and I reminded him of that, gave him
16 the opportunity to ask me to bow out of the
17 Richland County case, and he said that he would be
18 fine with my continuing to participate.

19 But answering your question, the case was
20 dismissed and all I did was make a ruling that he
21 objected to.

22 Q. Thank you, Judge. Just have some housekeeping
23 issues now. Since submitting your letter of intent
24 have you sought or received the pledge of any
25 legislature either prior to this date or pending

1 **the outcome of your screening?**

2 A. No.

3 **Q. Have you asked any third parties to contact members**
4 **of the General Assembly on your behalf or are you**
5 **aware of anyone attempting to intervene in this**
6 **process on your behalf?**

7 A. No. There are several people who will say "Hey,
8 what can I do?" And I just tell that I don't have
9 anything for them to do because the rules that --
10 the rules being the way they are.

11 **Q. Thank you. Since submitting your letter of intent**
12 **to run for this seat, have you contacted any**
13 **members of the Commission about your candidacy?**

14 A. No.

15 **Q. Do you understand that you're prohibited from**
16 **seeking a pledge or commitment directly or**
17 **indirectly until 48 hours after the formal release**
18 **of the Commission's report and are you aware of the**
19 **penalties for violating the pledging rules?**

20 A. Yes, ma'am.

21 MS. DEAN: I will note that the Pee Dee
22 Citizens Committee reported that Judge James
23 is qualified in the criteria of constitutional
24 qualifications, physical health, and mental
25 stability. The Committee reported that Judge

1 James is well qualified in the criteria of
2 ethical fitness, professional and academic
3 ability, character, reputation, experience,
4 and judicial temperament.

5 I note for the record that any concerns
6 raised during the investigation regarding the
7 candidate were incorporated into the
8 questioning today.

9 Mr. Chairman, I have no further
10 questions.

11 CHAIRMAN CAMPSSEN: Thank you, Ms. Dean.
12 Any questions by members of Judge James?

13 SENATOR HEMBREE: Mr. Chairman.

14 CHAIRMAN CAMPSSEN: Senator Hembree.

15 SENATOR HEMBREE: Thank you, Mr.
16 Chairman.

17 EXAMINATION

18 (By Senator Hembree)

19 **Q. Hello, Judge James. Good to see you, sir.**

20 **A. Senator, how are you doing?**

21 **Q. I'm doing okay. So far so good. How about you?**

22 **A. I'm hanging in there.**

23 **Q. Okay. I won't make it any -- too much harder for**
24 **you. You've answered some of my questions about**
25 **separation of powers and your view of that. So I'm**

1 going to dispense with those and sort of cut to a
2 couple of questions that are really -- from my own
3 -- for my own benefit.

4 Well, first off, two related questions. What
5 are the most pressing issues that you see facing
6 the bench these days and the bar, if you can, you
7 know, mix those together, but if they're separate,
8 I'll leave that up to you.

9 A. I probably would mix those. As far as the bar is
10 concerned I first devote myself to talking about
11 the criminal docket. I was in York County two
12 weeks and their -- the Chief Justice, former Chief
13 Justice, established a benchmark for disposition of
14 cases having a certain percentage and wanting 80
15 percent of those cases to be a year old or less.
16 York County is at 92 percent. Sumter County is at
17 47.

18 And it boils down to people you -- the
19 numbers. A pressing area especially in the
20 circuits that aren't living up to that benchmark as
21 artificial as it might be, it all boils down to the
22 number of solicitors. We have six or seven
23 assistant solicitors in Sumter County. York County
24 has 22. They have Tega Cay. We don't have Tega
25 Cay. The Greenville circuit, Spartanburg circuit,

1 the Aiken circuit, those areas are blessed with
2 adequate numbers of solicitors and public
3 defenders. Ours work just as hard as anybody, but
4 with six or seven you can't possibly keep up.

5 So I think that as far as the bar is concerned
6 and that translates into the citizens, whether
7 they're victims, defendants, or whatever, that is
8 extremely pressing and concerning that we try to
9 deal with every day.

10 **Q. And you say "docket" and I hear that. There's been**
11 **a lot of discussion -- there was some discussion**
12 **earlier today about docket and how to structure**
13 **docket, those sorts of questions, but I hear loud**
14 **and clear from you that this is more of a resource**
15 **issue and perhaps a training issue than as a**
16 **systems issue; would that be a fair statement?**

17 **A.** It is because if we had 10 on each side our numbers
18 would be a lot better. And you can't ask 6 or 7 or
19 even 8 more people to do any more than they're
20 doing. But the turnaround time between terms of
21 court is so short, they're treading water. If we
22 had the resources, and I'm talking about people.
23 I'm not talking about adding staff, non-lawyer
24 staff, I'm talking about lawyer people, we would
25 have a lot better results. And I could go -- I

1 could go on and on and on about what I think could
2 be done about that, but that would take hours.

3 Q. And just -- I'll cap it off with this. When you --
4 do you see, and I don't know the answer to this or
5 I don't have an opinion. Do you see a difference
6 in quality or, you know, level of sophistication
7 among different circuits or does that -- do you
8 feel like the training is adequate, it's just more
9 about boots on the ground?

10 A. I think training is there, for example, in the
11 Horry circuit, as you well know, there are four --
12 three -- at least three teams of prosecutors who
13 work Monday, Tuesday, Wednesday, Thursday, they
14 rotate. When the day they're not in court take --
15 engaged in pleas, they're preparing other cases
16 while another team is in there working. In Sumter,
17 we have one team, it's resources.

18 Q. Yeah. And then kind of this sort of leads me into
19 my next question, you may have just answered some
20 of it for me. Do you see any -- other than
21 judicial salary increases --

22 A. Wait, wait, I won't talk about that.

23 Q. You won't talk about that. Do you see any
24 legislative changes that you would recommend to
25 members of the General Assembly that we need to

1 **consider based on your experience on the bench kind**
2 **of watching the process?**

3 A. Well, one -- one was made this past April when the
4 -- if you're talking about specifics?

5 **Q. Sure.**

6 A. When the burglary second non-violent -- I called it
7 a -- it was problematic for us for burglary second
8 non-violent who could not get it suspended while
9 away had to do three years of active time in the
10 youthful offender division. That was changed, I
11 believe, Senator Malloy in April where that only
12 applies to burglary second and violent. That was
13 one change I always advocated because prosecutors
14 just pleaded down to burglary third. So it was
15 kind of a distinction without a practical
16 difference.

17 The assault and battery law, if you have ever
18 been in a courtroom and listened to a jury charge
19 and you go from attempted murder to ABHAN to A & B
20 first, second, and third it's excruciating. When
21 you sit down and read it academically and
22 intellectually, it makes perfect sense. But when
23 you are charging that to a jury it becomes
24 practically impossible for them to grasp it.

25 I had a case in Williamsburg County with

1 attempted murder and a co-defendant charged with A
2 & B second, and I won't get into the facts, but the
3 jury we found out later reached the verdict in ten
4 minutes on attempted murder. But three hours plus
5 could not reach a verdict because they did not know
6 the difference between A & B First and A & B
7 Second. That's one example.

8 I could probably think of more, but seeing who
9 the audience is I might not need to do that.

10 **Q. Fair enough.**

11 A. But they're -- they're --

12 **Q. Round up the usual suspects.**

13 A. Sometimes we scratch our heads and wonder why, but
14 like I said earlier it's not my job to wonder why,
15 it's just going there and apply the law that you
16 enact.

17 **Q. I've got one final thing to bring up. It's a bit**
18 **of a, I guess, a bit of a pointed question, but you**
19 **said at the very outset that you were interested in**
20 **-- one of the reasons that you were interested in**
21 **applying for this job was that you began looking at**
22 **the rulings and sort of asking the question "why."**
23 **You know, why did the court reach this decision?**
24 **Why did the court reach that decision? Did you**
25 **find yourself with concern over the "why" and that**

1 **prompted you to be interested or is --**

2 A. Usually the --

3 **Q. -- there another reason?**

4 A. -- concern, if you use that word, the concern was
5 when I got reversed and I would try to wonder why.
6 For example, there's a recent PCR case Early vs.
7 The State of South Carolina in which I was
8 reversed. Justice Kittredge who I greatly respect
9 wrote the majority opinion and my slant on the two
10 factors being taken into account at a PCR, he
11 differed with me on how the second one was applied.

12 Riley versus, I believe, it's Ford Motor
13 Company, compelling reasons for granting or --
14 granting an additur or a remittitur. Sometimes you
15 wonder why did they do what they did. It's not a
16 point of disagreement. Of course, everybody takes
17 pride in their own rulings and, you know, I've been
18 reversed before and on second thought read the
19 opinion and said that I was was wrong.

20 But to answer your question directly, it's not
21 why I think they were wrong, but it just became
22 more of an interest to me to see how they got from
23 point A to B to C, and it's just how my mind -- my
24 focuses change.

25 **Q. Thank you, Judge. Appreciate your answers.**

1 A. Thank you.

2 CHAIRMAN CAMPSEN: Any further questions?

3 (No response.)

4 CHAIRMAN CAMPSEN: All right. Judge, I
5 have a few questions --

6 JUDGE JAMES: Yes, sir.

7 CHAIRMAN CAMPSEN: -- that I've
8 essentially been asking each candidate so
9 don't take this is as I'm picking on you.

10 REEXAMINATION

11 (By Chairman Campsen)

12 **Q. First question, do you believe that the duty of the**
13 **Supreme Court is to interpret the words of the**
14 **Constitution only according to the meaning they had**
15 **when the Constitution was adopted?**

16 A. Again, that's context, forgive me if I get the
17 context wrong, but we have in the Constitution
18 rights that in my view don't -- aren't enhanced
19 over time. They're just to be interpreted perhaps
20 in the context of new developments. For example,
21 as I wrote in response to a question probably in my
22 pre-screening or my retesting in 2012, there's only
23 one Fourth Amendment. The circumstances of a case,
24 whether it is a computer database or whether it is
25 a cell phone or whether it is your automobile,

1 those constructs are the same. But the
2 circumstances change, but I don't believe, at least
3 in my view, I don't believe the rights change.

4 The Fifth Amendment is still the Fifth
5 Amendment. The First Amendment is still the First
6 Amendment. So I don't think, if your question is,
7 are new rights created over time? I would say
8 "no." How certain rights are addressed and
9 analyzed within the scope of any judicial setting
10 can change, but the fundamental, the bedrock part
11 of it is the same.

12 **Q. Okay. Thank you. Another question, do you believe**
13 **that the Supreme Court has the power to order**
14 **remedial legislative action in order to satisfy**
15 **your case or controversy brought against the state?**

16 A. My personal view is -- the short answer would be
17 "no." That would be perhaps, again, depending on
18 the context, fall into a separation of powers issue
19 if the courts did that willy nilly or whenever the
20 court wanted to, that would just be chaos.

21 If the legislature has an assigned obligation
22 under statute or Constitution, I don't think -- I
23 don't think a court should tell the legislature
24 what to do. One of the questions that I would ask
25 myself is, what if the legislature didn't do

1 exactly what the court wanted it to do? Are you
2 going to hold 170 members of the General Assembly
3 in contempt?

4 **Q. Most of the public does.**

5 A. Well, if, for example, if a perfect bill was
6 submitted and it didn't pass by one vote what are
7 what the court's supposed to do. I think that's --
8 I spoke about walls a few minutes ago, that's just
9 one of those walls.

10 **Q. Okay. In your opinion -- what, in your opinion,**
11 **are types of policy matters that are nonjusticiable**
12 **political questions?**

13 A. Well, that might go back to what you just asked a
14 moment ago, the legislature is charged with
15 responsibility of implementing or enacting statutes
16 based on the legislature's overall policy
17 considerations. If you could, repeat the tail end
18 of the question for me again.

19 **Q. What is your opinion of types of policy matters**
20 **that are nonjusticiable political questions? Types**
21 **of policy matters that are nonjusticiable?**

22 A. Broadly, I would say that policy matters that are a
23 -- totally dependant upon the legislature or in
24 some instances the executive -- legislative/
25 executive branches prerogative. For example, I

1 can't tell the legislature that I thought that the
2 burglary second nonviolent statute was wrong and
3 I'm not going to sentence people according to that
4 statute because I don't think it's right.

5 I'm struggling with your question because a
6 lot of things are bouncing through my head right
7 now, but a nonjusticiable political question or I
8 would call it a nonjusticiable political issue can
9 never be addressed by the courts because we don't
10 belong there.

11 Did you ask me which ones we could address or
12 which ones we shouldn't address?

13 **Q. No just what -- what did you -- the types of policy**
14 **matters that are nonjusticiable questions like**
15 **examples --**

16 A. We'll give --

17 **Q. -- you've given one or two already, but --**

18 A. Ones in which the legislature has been vested with
19 the authority to address in the Constitution. We
20 don't belong there. Judges should not be
21 interested in being there in the -- in the same
22 room where those questions are asked and answered.

23 I -- I would probably do a lot better job at
24 answering your question if I had some specifics in
25 mind, but we all know a recent specific that was

1 very interesting to discuss and that would be the
2 school funding case. I have my own thoughts on
3 that case. I would assume that most would say that
4 that question has been resolved as a matter of law
5 or that is the law of case. I have my own thoughts
6 about which opinion was correct. That goes back
7 to one of the things I said a few minutes ago is
8 the chaos that develops in those instances is when
9 the legislature doesn't do what the Supreme Court
10 says it should do; what do you do then? Do you
11 have a staring contest or -- do you -- does the
12 Supreme Court become even more of a super
13 legislature by telling the legislature exactly what
14 to do.

15 We can't referee every single decision you
16 make. The only time we can step in to -- step in
17 to address a legislative enactment is when it's
18 repugnant to the Constitution, otherwise we have no
19 business being there.

20 **Q. Thank you.**

21 CHAIRMAN CAMPSSEN: Senator Malloy.

22 SENATOR MALLOY: Yes, sir.

23 EXAMINATION

24 (By Senator Malloy)

25 **Q. Hey, Judge, --**

1 A. Senator.

2 Q. -- how you doing? So you've been on the bench now
3 for ten years?

4 A. Yes, sir.

5 Q. Okay. Have you had any death penalty cases that
6 came before you as judge alone where you had to
7 render punishment?

8 A. Myself, no, sir.

9 Q. Okay. And have you presided over any death penalty
10 trials?

11 A. Not trials. I had one that was nearing a trial,
12 but it was going to be tried in the May -- this
13 coming May, May of '17, but the Defendant pled to
14 two murders and received two consecutive life
15 terms.

16 Q. Have you ever written or been a part of anything,
17 article, protest, anything that would show your
18 position on the death penalty?

19 A. No, sir. I -- I've had a death penalty PCR, I
20 presided over that, it was Anthony Woods versus The
21 State, but "no" to answer your earlier question,
22 no, sir.

23 Q. The funding is an interesting question and a
24 difficult question that we have between the Supreme
25 Court and the legislature. Do you have any

1 feelings on how to -- the funding of the Supreme
2 Court should -- well of the courts should be had as
3 it relates to legislature providing it, just in
4 general, staying out of it, whether we do it on
5 fees and fines and those kind of things or do you
6 think it may be better served by taking a
7 percentage of the general appropriations bill?

8 A. Well, Chief Justice Pleicones spoke in Georgia this
9 past weekend about the funding and I believe he
10 said that the vast -- that too much of our funding
11 comes from fees and fines. I would tend to agree
12 with him because that's not a very stable source of
13 revenue for our branch. We are an equal branch of
14 government with the legislative and the executive.
15 I don't profess to know all of the vagaries of
16 funding, but it's going to be very precarious if
17 we're basing out legitimacy and our ability to
18 function properly on fees and fines that are paid
19 at -- during any given fiscal period.

20 Q. Okay. And I want to ask you this as it relates to
21 the Supreme Court and the legislature, do you
22 believe that the Supreme Court has the power to
23 issue a writ of mandamus against the General
24 Assembly or a member in the General Assembly in
25 order to get that legislature to perform or not

1 perform certain action.

2 A. I would say not.

3 Q. And is there any circumstances that you believe
4 that the judiciary had the ability to hold the
5 legislative branch in contempt?

6 A. No.

7 Q. One of the questions that has come up often is that
8 in the last several years we have a lot of
9 three/two decisions in our Supreme Court and you as
10 the Supreme Court Justice, you know, a lot of
11 people and litigants like unanimous decisions from
12 the court so they try to provide a clear statement
13 to lawyers and litigants and people that may be
14 impacted by the law. Under what circumstances do
15 you feel that it would be necessary for you to
16 write a dissent or concurrence, first part. And is
17 there anything that you would do to try to avoid
18 split decisions?

19 A. Well, I guess that brings up the issue of consensus
20 building. To me that's personality driven --

21 Q. Yes, sir.

22 A. -- it's not institutionally driven. You can have
23 five people on the Supreme Court who are their own
24 people and they all -- you know, they may not want
25 to be part of a consensus building court.

1 Three to -- three to two decisions as a judge,
2 and frankly as a lawyer, really don't bother me
3 because the three is what makes the difference.
4 Sometimes the three to two decisions are better for
5 a circuit judge because a lot of lawyers later on
6 are starting to make arguments that the sentence
7 made -- the majority reject it. That -- but that's
8 totally off of the point.

9 I would be compelled to write a dissent in a
10 particular case if I truly thought that the
11 majority was wrong, not just so I can have my own
12 say. And one of the things that I -- and
13 concurring opinions is the same thing. I know that
14 we had -- we do have a lot of those. One of the
15 things that I've never been able to really
16 understand is when justice so and so, or Judge so
17 and so concurs in result only and doesn't write
18 anything, I don't even know what that means.

19 But my role in being a consensus builder would
20 necessarily depend on the personalities involved.
21 I'm not the kind of person who goes along to get
22 along. So if I felt strongly enough about a
23 particular issue where I thought a dissent was
24 warranted, I wouldn't hesitate to write one.
25 Certainly would always be respectful to the

1 majority. But -- I hope that answers your
2 question.

3 I -- I don't -- I frankly -- I don't see the
4 problem with three to two or four to one decisions
5 myself. Some members of the public may feel
6 differently, some members of the bar may feel
7 differently, but I think as long as we have a
8 majority opinion that carries the day.

9 **Q. Okay. And it goes on in that there was a statement**
10 **that we had had and it circulated around and**
11 **Justice Brandeis says some things are better**
12 **settled than settled right. Any opinion on having**
13 **just the matter settled or the matter settled right**
14 **under the --**

15 A. Are you talking about under the stare decisis or
16 are you talking about --

17 **Q. Stare decisis.**

18 A. Well, in recent years our Supreme Court has written
19 about single case stare decisis which they say is
20 not really stare decisis at all. I think that had
21 to do with the -- an issue where -- child support
22 issue whether or not the supporting parent had to
23 pay for a child's college education.

24 If that -- it was a certain way for years and
25 then one case reversed that and it came back a

1 couple years later, reversed that, said that's
2 really not stare decisis because it was just one
3 case.

4 You don't have stare decisis and just rely on
5 it blindly forever and ever. You shouldn't
6 perpetuate a wrong decision or a wrong series of
7 decisions just because they're established. So
8 certainly I see room, at any given time, if the
9 circumstances warrant where a series of cases can
10 be reversed. But if Justice Brandeis was talking
11 about single case versus series of cases stare
12 decisis, I would rather see it settled right.

13 **Q. Thank you very much.**

14 **A. Yes, sir.**

15 CHAIRMAN CAMPSEN: Thank you. Any
16 further questions? Okay. Mr. Safran.

17 MR. SAFRAN: Yes, sir.

18 EXAMINATION

19 (By Mr. Safran)

20 **Q. Just quickly. How would you distinguish between**
21 **the notion of judicial activism as opposed to**
22 **simply entertaining a new or creative argument on a**
23 **point of law or statute that may be countered by**
24 **saying, we just never did it that way. We've never**
25 **applied it that way in the past, even though the**

1 **argument is legitimate.**

2 A. Well, going back to one of my initial statements,
3 you certainly afford that person the right and the
4 opportunity to make the argument they want to make.

5 And the first part of your question was what
6 again?

7 **Q. Well, I think there's a term called judicial**
8 **activism that seems to --**

9 CHAIRMAN CAMPSEN: Mr. Safran, would you
10 speak into your microphone --

11 MR. SAFRAN: Sorry.

12 CHAIRMAN CAMPSEN: -- more clearly.

13 Thank you.

14 MR. SAFRAN: Can you hear me now?

15 JUDGE JAMES: Yes, sir.

16 **Q. There seems to be a notion of judicial activism**
17 **that is -- it's frowned upon. On the other hand,**
18 **over the course of a lot of years I have seen novel**
19 **approaches taken to a point that might have been**
20 **something that hadn't been considered before. And,**
21 **I guess, where do you kind of --**

22 A. Well --

23 **Q. -- distinguish between the --**

24 A. -- I certainly there's room for that, but -- and I
25 would dare say that if 50 judicial candidates were

1 to stand at this podium and ask -- answer a
2 question, how do you feel about judicial activism,
3 all 50 would say I don't believe in it. It's also
4 in the eye of the beholder. What I did to be
5 judicially -- a judicial act -- activist, that
6 really wasn't judicial activism because it was just
7 a different slant on the same argument.

8 All of you are probably tired of hearing it.
9 It all depends on context. I think that a judge's
10 decisions should be made with a healthy respect for
11 what law is, what it has been for a long, long
12 time. But if there are circumstances that warrant
13 a different result, I don't think that would be
14 judicial activism. I think that would be doing
15 what a judge should do. Listening to the
16 arguments. Listening to a new slant, if you will,
17 and perhaps not totally modifying or changing the
18 law.

19 But there are exceptions. I think where
20 judicial activism comes in is situations where the
21 -- a judge or -- a Circuit Court judge or a Family
22 Court judge or an Administrative Law judge or
23 Appellate Court starts trying to legislate based on
24 what they think the result of that case should be.
25 Not on what the arguments are and what the true

1 result should be within the confines of the law.

2 Q. Let me follow up just quickly. And again, I've
3 never appeared before you so I can't say one way or
4 the other, I'm just saying this hypothetically.

5 A. Yes, sir.

6 Q. I've encountered situations where judges maybe at
7 the circuit level might be reluctant to take a
8 situation like that and say "Well, you know, the
9 Supreme Court has never said this or they've never
10 interpreted it this way." And just more or less
11 kind of passed. And say "Let them be the one."
12 Well, you're basically now seeking a position where
13 you would be the one.

14 A. Right.

15 Q. So how would you note, if any, how your mindset
16 would change as to how you might approach a
17 question now versus in a position of being on the
18 Supreme Court?

19 A. That's an excellent question. Let me step back.
20 As a circuit judge we certainly follow the
21 precedent as it's established. And many times we
22 make rulings that that's an interesting argument.
23 It may carry the day some day in front of an
24 Appellate Panel, but not in front of me because
25 I've got to base my decision on X, Y, and Z in this

1 case.

2 As an appellate judge, I would still have a
3 healthy respect for what the law is in -- and --
4 and why it is that way. But Mr. Malloy, I believe,
5 asked me the question of, is there room for
6 changing the law? Maybe it was Senator Campsen
7 that asked me whether or not there's room for
8 changing the law if the series of decisions was
9 wrong.

10 Certainly an appellate judge has more power to
11 do that. I would not use that power blindly or
12 without a healthy respect for the where's and why's
13 of what's gone on before.

14 **Q. One last question. Would you characterize**
15 **something as changing the law if simply a**
16 **particular application hadn't risen in the context**
17 **before. Is that necessarily changing or is it just**
18 **simply applying it in a different fashion?**

19 **A.** Well, as long as it doesn't fall under the category
20 of a perceived new constitutional right, I think
21 the answer to your question would be "yes" there's
22 always room for that.

23 MR. SAFRAN: Okay. Thank you very much.

24 JUDGE JAMES: Yes, sir.

25 CHAIRMAN CAMPSSEN: Any further questions?

1 (No response.)

2 CHAIRMAN CAMPSEN: Okay. Thank you,
3 Judge James.

4 JUDGE JAMES: Thank you.

5 CHAIRMAN CAMPSEN: This concludes the
6 portion of your -- this portion of your
7 screening process. As you know, the record
8 will remain open until the formal release of
9 the report of qualifications and you may be
10 called back at such time if the need arises.

11 I thank you for your offering and thank
12 you for your service to the State of South
13 Carolina.

14 JUDGE JAMES: Thank you. Thank you for
15 having me.

16 (Candidate excused.)

17 CHAIRMAN CAMPSEN: We're going to take a
18 break.

19 (Off the record.)

20 CHAIRMAN CAMPSEN: Okay. We'll call the
21 Commission meeting back to order. Judge
22 Kelly, welcome.

23 JUDGE KELLY: Thank you, sir.

24 CHAIRMAN CAMPSEN: Please raise your
25 right hand.

1 (The Judge is sworn in.)

2 CHAIRMAN CAMPSSEN: Have you had an
3 opportunity to review your professional data
4 questioning -- your personal data
5 questionnaire and sworn statement?

6 JUDGE KELLY: I have and I see the
7 amendments here to. Yes, sir.

8 CHAIRMAN CAMPSSEN: Okay. So with the
9 amendments are -- they're correct?

10 JUDGE KELLY: Yes, sir.

11 CHAIRMAN CAMPSSEN: Does anything else
12 need to be changed?

13 JUDGE KELLY: No, sir.

14 CHAIRMAN CAMPSSEN: Do you object to our
15 making these documents and any amendments a
16 part of the record of your sworn testimony?

17 JUDGE KELLY: I do not.

18 CHAIRMAN CAMPSSEN: It will be done at
19 this point in the transcript.

20 [EXHIBIT 19, JUDICIAL MERIT SELECTION
21 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
22 HONORABLE R. KEITH KELLY, ADMITTED.]

23 [EXHIBIT 20, SWORN STATEMENT FOR THE
24 HONORABLE R. KEITH KELLY, ADMITTED.]

25 CHAIRMAN CAMPSSEN: The Judicial Merit

1 Selection Commission has thoroughly
2 investigated your qualifications for the
3 bench. Our inquiry has focused on nine
4 evaluative criteria and has included a ballot
5 box survey. Thorough study of your
6 application materials, verification of your
7 compliance with state ethics laws, search of
8 newspaper articles in which your name appears,
9 study of previous screenings, a check for
10 economic conflicts of interest. We have
11 received no affidavits filed in opposition to
12 your election. No witnesses are present to
13 testify.

14 Do you have a brief opening statement
15 you'd like to make at this time?

16 JUDGE KELLY: Mr. Chairman, no, not
17 really other than I'm honored to be here and
18 thank you for having me.

19 CHAIRMAN CAMPSER: Thank you. Please
20 answer counsel's questions.

21 JUDGE KELLY: Yes, sir.

22 EXAMINATION

23 (By Ms. Brogdon)

24 **Q. Good afternoon, Judge Kelly.**

25 **A. Hi.**

1 **Q. How are you?**

2 A. Fine.

3 MS. BROGDON: I would note for the record
4 that based on the testimony contained in Judge
5 Kelly's PDQ, which has been included in the
6 record with his consent, Judge Kelly, meets
7 the constitutional and/or statutory
8 requirements for this position regarding age,
9 residence, and years of practice.

10 **Q. Judge Kelly, why do you now what to serve**
11 **as a justice on the South Carolina Supreme Court?**

12 A. Quite honestly, Counsel, the reason I want to serve
13 is I can do the job. And I'll explain that because
14 I don't -- I'm not saying that flippantly.

15 Years ago I ran for public office and had the
16 honor of serving. And in my first campaign I was
17 giving out some sound bites out there as we do from
18 time to time as -- on the campaign trail and a
19 fellow that I did not know became a good supporter
20 and friend to follow. Dwight Mosley called his
21 side very early and he asked me why I wanted to be
22 a representative. I said "Because I can do the
23 job." And he said "Quit talking in sound bites and
24 tell the people you can do the job." So quite
25 honestly that's why I'm here, I can do the job.

1 **Q. Thank you. Judge Kelly, how do you feel your legal**
2 **and professional experience thus far will assist**
3 **you to be an effective Supreme Court Justice?**

4 A. Well, I bring to the bench 25 years of trial work.
5 But some -- not as much in civil as I did in
6 criminal and family law, but certainly some civil.
7 And I bring 25 years of trial practice. Also, now
8 bring three and a half years on the bench. I think
9 that my experience coupled with my work ethic and I
10 was hopeful to get some good comments from members
11 of the bar, they recognize that. I think coupled
12 those two together makes me an excellent candidate.

13 **Q. Thank you, Judge. Judge Kelly, how would you**
14 **describe your general judicial philosophy?**

15 A. I think I'm conservative. In my profession as well
16 as in my personal being. So I'm a strict
17 constructionist of the Constitution. Also with
18 statutory language, I strictly read what the
19 General Assembly has written and passed, so I'm
20 conservative.

21 **Q. Thank you. Judge Kelly, what is your vision for**
22 **the future of our judicial system and what changes**
23 **would you advocate and why?**

24 A. Well, first of all I would say this. I'm not the
25 person in the room with all the answers, I never

1 have been that person. I had never been a circuit
2 judge before I became a circuit court judge. So
3 having said that I had to come and learn the job
4 before you could implement some changes, which I
5 did on the Circuit Court bench.

6 For instance, last year I was the Common Pleas
7 Administrative judge for the 7th Circuit. This
8 year I am the General Sessions Administrative
9 Judge.

10 One of the things we implemented on the
11 Circuit Court in the 7th Circuit by agreement we
12 got the bar together, the private bar, and the
13 civil side is scheduling orders. And they love it
14 and I didn't even draw up the order. I got the
15 lawyers to draft the scheduling order which gives
16 you benchmarks for time of filing, to what's going
17 to be done as part of discovery materials, when the
18 deposition is going to be completed, settlement
19 conference is scheduled.

20 To my knowledge they're still doing those even
21 today, even though I'm no longer the admin judge.
22 And again, it's not some order that I issued
23 because we don't have private rules. As we all
24 know in state court like we do in federal court,
25 but by agreement they would like that and they did

1 that.

2 So my answer to that is I would have to learn
3 the job before I could implement changes.

4 **Q. Thank you. Judge Kelly, to what extent do you**
5 **believe that a judge should or should not defer to**
6 **the actions of the General Assembly?**

7 A. The General Assembly has a plenary of powers. What
8 the General Assembly passes, it is from the people
9 of this state. Therefore, the judiciary is to
10 interpret that, not to stray from it.

11 **Q. Thank you. And moving to the ballot box. Judge**
12 **Kelly, the Commission received 259 ballot box**
13 **surveys regarding you, with 32 additional comments.**
14 **The ballot box contained the following positive**
15 **comments. "Excellent judge who would be a**
16 **welcomed addition to the Supreme Court, fair and**
17 **even-tempered. I have always found his behavior to**
18 **be professional, ethical, and respectful. Judge**
19 **Kelly has an excellent work ethic. And Keith Kelly**
20 **would be a great addition to our Supreme Court.**
21 **His knowledge of the law and courtroom temperament**
22 **are extraordinary. Judge Kelly treats everyone in**
23 **his courtroom fairly and respectfully."**

24 **Four of the written comments express concerns.**
25 **These comments indicated that you lack experience,**

1 particularly in knowledge of appellate work. What
2 response would you offer to that concern?

3 A. What I would say to that, Counsel, is that I spent
4 25 years as a trial lawyer. I didn't -- I did not
5 do very much appellate work whatsoever. So I can't
6 bring the appellate work there, but what I do bring
7 is 25 years of being that lawyer, in the
8 courtrooms, standing next to that litigant either
9 in a civil case or in a criminal case. So I bring
10 that experience to the bench.

11 Q. Thank you. And, Judge Kelly, you indicated in your
12 PDQ that a lawsuit was filed against your prior law
13 firm, Lister, Flynn & Kelly in 2005, by John
14 Garrett --

15 A. Yes.

16 Q. -- in the Spartanburg County Court of Common Pleas.
17 This lawsuit was not covered in your previous
18 screening hearing. Could you explain the nature
19 and disposition of the lawsuit?

20 A. I think that one was included. We amended on the
21 Zapata case, but I can explain that one if you'd
22 like.

23 Q. And it's in your PDQ amendment. It wasn't in your
24 hearing transcript --

25 A. Oh, okay.

1 Q. -- from your previous screening so --

2 A. Okay. I'll be happy to explain that. The lawsuit
3 was Mr. John Garrett. Some legal work was done by
4 not even a member of the firm. I practiced with
5 Tony Lister, Larry Flynn, and myself. We were
6 Lister, Flynn & Kelly. We had a lawyer by the name
7 of Brendan Delaney who was an associate in the
8 firm. Brendan did some legal work for Mr. Garrett.
9 He was successful in that, but he was unhappy.

10 He came back. He wanted Brendan to represent
11 him in something else, I think, for free. Brendan
12 told him couldn't, as I recall the facts of that
13 case, I wasn't really involved in it. And he filed
14 a suit. He filed it, as I recall, he actually
15 filed, I think, two. He filed one and he served --
16 he represented himself and he served the secretary
17 or our receptionist which was not -- I was the
18 agent for service of process so therefore that one
19 was kicked.

20 He filed the next one outside the statute of
21 limitations. As I recall, we turned it over to our
22 insurance carrier and that one was openly
23 dismissed. I think the final result of that is he
24 was sanctioned and had to pay attorney fees and
25 costs, I think, but I really wasn't involved in

1 that.

2 **Q. Okay. Thank you. And, Judge Kelly, your SLED**
3 **report indicated that there was a lawsuit filed**
4 **against you in 1993, in the U.S. District Court for**
5 **the District of South Carolina, captioned, USA**
6 **versus Zapata which you referenced a minute ago.**

7 **A. Yes.**

8 **Q. Because this lawsuit was also not covered in your**
9 **last screening hearing, would you please explain**
10 **the nature and disposition of that?**

11 **A. I will. I had forgotten about that, if I ever**
12 **really knew about it; I guess I did. I actually**
13 **worked for Jim Brooks who is now a retired lawyer**
14 **in Spartanburg. And I represented Mr. Zapata in a**
15 **criminal case, in a drug case.**

16 He and his wife own real estate. We took a
17 lien against that real estate to secure legal fees.
18 Mr. Zapata was convicted of that. The house went
19 into foreclosure. We were never paid a penny for
20 that. I received a call from the SLED agent saying
21 this has now been discovered. I didn't remember
22 and didn't get any money for it. We were named as
23 parties so it would shake loose the title when I
24 worked for a junior lien holder. So again, no
25 money was paid; I forgot about it.

1 Q. Thank you, Judge Kelly. And just a few
2 housekeeping questions. Since submitting your
3 letter of intent, have you sought or received a
4 pledge of any legislator either prior to this date
5 or pending the outcome of your screening?

6 A. I have not.

7 Q. Have you asked any third parties to contact members
8 of the General Assembly on your behalf or are you
9 aware of anyone attempting to intervene in this
10 process on your behalf?

11 A. I have not and I am not.

12 Q. Since submitting your letter of intent to run for
13 this seat, have you contacted any members of the
14 Commission about your candidacy?

15 A. No, ma'am.

16 Q. And finally, do you understand that you're
17 prohibited from seeking a pledge or commitment
18 directly or indirectly until 48 hours after the
19 formal release of the Commission's report and are
20 you aware of the penalties for violating the
21 pledging rules?

22 A. I am and I do.

23 Q. Thank you.

24 MS. BROGDON: I would note that the
25 Upstate Citizens Committee reported that Judge

1 Kelly is well qualified in the evaluative
2 criteria of ethical fitness, professional
3 and academic ability, character, reputation,
4 experience and judicial temperament. And
5 qualified in the remaining evaluative criteria
6 of constitutional qualifications, physical
7 health, and mental stability.

8 I would note for the record that any
9 concerns raised during the investigation
10 regarding Judge Kelly were incorporated into
11 the questioning today.

12 Mr. Chairman, I have no further
13 questions.

14 CHAIRMAN CAMPSER: Thank you. Any
15 questions for Judge Kelly? Senator Hembree.

16 SENATOR HEMBREE: Thank you, Mr.
17 Chairman.

18 EXAMINATION

19 (By Senator Hembree)

20 **Q. Hi, Judge Kelly. How are you this afternoon?**

21 **A. I'm good, Senator. How are you?**

22 **Q. I'm doing fine. Thank you. Do you -- you touched**
23 **on when you were asked the questioned about your**
24 **judicial philosophy. You responded that you were**
25 **conservative and, I mean, I have an idea in my own**

1 mind what that might look like, but I would like
2 you, if you would, to kind of elaborate what you
3 mean by that. And to make sure I'm thinking right,
4 what you mean by that in a judicial sense?

5 A. Well, quite honestly what I mean by that, Senator,
6 is what I said a little bit earlier. I'm sorry I
7 wasn't clear. It is not the role of the judiciary
8 to make law. Having served in this honorable body
9 it is the senators and the house members and
10 representatives who make the law. It is not up for
11 us on the Circuit Court, Court of Appeals, Supreme
12 Court, anywhere else to make law. It is to follow
13 what has been written into law and passed by this
14 body.

15 Q. Do you have any -- as you have indicated --
16 certainly, you've been practicing a long time and
17 you've been on the bench for a period of time. Are
18 there some observations you've made that in that
19 role that you've said, you know, these are some
20 things we really need to fix in the judiciary and
21 in the judicial branch of government, they can
22 include the bar as well. So I'm just going to
23 throw that question, do you have any
24 recommendations or suggestions on, you know, big
25 issues that the judicial branch is facing?

1 A. I don't know about this, Senator. I will tell you
2 this, and it's -- it is something that's -- it's
3 just historically been this way in South Carolina.
4 Recently, I've been working on something I was
5 trying very hard to get the legislative intent and
6 I was actually going back looking for any notes or
7 anything and talking just in a theory with -- now
8 he's a Circuit Court Judge but has been a
9 representative who was on House Judiciary when that
10 bill came through 20 something years ago.

11 But I would say that the lack of some written
12 comments or what was said as subcommittee, things
13 like that would be very helpful if we had that.
14 But I don't think South Carolina has ever really
15 done that. That would be helpful.

16 Q. I got you. That's a good suggestion. What are
17 the, if anything, as we sit and you have a great
18 perspective on this coming from the background with
19 the General Assembly. Do you have any
20 recommendations for us in the General Assembly,
21 changes that we might need to make that, you know,
22 as you sit there on the bench going why don't these
23 guys do this, you know, why -- we need to fix this?
24 Is there anything that jumps out at you like that?

25 A. No, sir, not really. No, I didn't -- I may just

1 speak on this, but I've had, actually before I came
2 on the bench there was some talk in the hallways
3 and the Family Court about that sex registry
4 applying to juveniles in that case, but I really --
5 because I've left the practice I don't have -- I
6 haven't kept up with family law, so I don't know if
7 that -- if there's been any tweaking of that done
8 or not. Representative Murrell Smith might be more
9 familiar with that than me at this point.

10 **Q. Thank you, Judge Kelly. Appreciate your responses.**

11 A. Yes, sir.

12 CHAIRMAN CAMPSEN: Any further questions?

13 Senator Malloy.

14 SENATOR MALLOY: Thank you, Mr. Chairman.

15 EXAMINATION

16 (By Senator Malloy)

17 **Q. Talk to my other chairman here and gentlemen from**
18 **my Sentence Reform Commission, you worked on that**
19 **really hard.**

20 A. Thank you.

21 **Q. We appreciate it. Have you seen that working in**
22 **the trial courts?**

23 A. Yes, sir. I sure have. You were my chairman on
24 that Senate Bill No. 1154.

25 **Q. Does anybody know more about it on the trial bench**

1 **than you?**

2 A. Probably not, sir. I still have my notes.

3 **Q. Well, prison population is down about 4 or 5,000**
4 **people, you know, just incredible and work**
5 **continues --**

6 A. Yeah, I got an email from my -- I saw a, I think,
7 it was Senator Campsen you were -- Chairman, you
8 were on that email thread from Christy, back in the
9 summer maybe we got an email, like the 10th
10 anniversary or something of that, again, 8th or
11 10th, something like that.

12 **Q. Senator Campsen and also Representative Smith in**
13 **regards so we are having a little bit of reunion of**
14 **sorts here. Now we have other folks that are**
15 **helping out with it. Representative Rutherford and**
16 **Senator Hembree --**

17 REPRESENTATIVE SMITH: I wouldn't
18 classify him as a help.

19 (Laughter.)

20 **Q. But I've asked others, Judge --**

21 REPRESENTATIVE SMITH: Hembree kills
22 everything.

23 (Laughter.)

24 **Q. Let me ask you, Judge, the issue as it relates to**
25 **the funding of the courts. And, you know, we've**

1 gone through the legislative process several times
2 and how we fund things on fees and fines and
3 different matters. I just -- see if you had any
4 thoughts on whether or not the -- it would be a
5 better approach to just take a percentage of the
6 general appropriations bill for some consistency?

7 A. Well, Senator, this is -- well. Okay. I don't
8 know as a Circuit Court Judge I get to say that,
9 but let me say this. We actually had that
10 conversation in 2010, or thereabouts in that the --
11 the legislative branch is a branch. It is not an
12 agency and therefore if we would simply -- if the
13 body saw fit because I know that the body really
14 just wished everything worked out the way it's
15 supposed to and it does most of the time without so
16 much back and forth.

17 But I think if a percentage or if you took
18 whatever that percentage is going to be, but it
19 won't be a whole percent. It may be three-quarters
20 of one percent, the total about 80 million dollars.
21 If you took that and just said, the General
22 Assembly is setting that aside for the judiciary
23 and if the funds were up then you have a little
24 extra money; if the funds are down you have less
25 money. And so you've got to manage it the way you

1 need to manage it. But if you did that then it
2 would automatically -- it would just fund itself
3 year after year, and it would be a stable -- sort
4 of a stable source there within a little bit of
5 movement each year.

6 **Q. Sure. Have you had any death penalty cases since**
7 **you've been on the bench?**

8 A. I have not.

9 **Q. So you have not had a chance to rule on one and --**
10 **as a sitting judge, single judge --**

11 A. No, sir.

12 **Q. -- right?**

13 A. I've been on four as a lawyer, but I've never tried
14 one as a judge.

15 **Q. You were assigned four when you were a lawyer?**

16 A. Yes, sir.

17 **Q. Okay. And so you've got that background.**

18 A. Yes, sir.

19 **Q. It -- it was first chair?**

20 A. No, I sat on the second chair from the Pee Dee.

21 **Q. And one of the other things that I had was that if**
22 **as an individual whether writing, protests, or any**
23 **type of petition, have you ever stated a position**
24 **publically on the death penalty?**

25 A. I have not.

1 Q. And I understand that you now have had a chance to
2 be on the court and had time as -- in the
3 legislature. One of the questions that I posed to
4 others is, did you think it was ever proper for the
5 Supreme Court to issue a writ of mandamus to the
6 legislature or any member to get them to perform
7 any action? Anytime it's ever appropriate?

8 A. I wouldn't -- if -- if we're talking -- can you put
9 some context on that, Senator?

10 Q. Just that, you know, normally a writ of mandamus is
11 whenever you send something down --

12 A. Yes, sir.

13 Q. -- get them to perform something. I was trying to
14 see if there's any -- I don't want to put a
15 situation out there because it sort of --

16 A. Okay.

17 Q. -- an issue. Say that what you are going to do in
18 a certain circumstance --

19 A. I -- I don't --

20 Q. -- see if there is any circumstance.

21 A. I cannot envision one as I stand here today.

22 Q. Okay. And another issue that we've had in the last
23 several years, we as lawyers and litigants and the
24 public at-large, we have seen the court come down
25 with three/two decisions on a lot matters. And

1 I've heard lawyers say that they wish that we could
2 have a unanimous decision of the court so it can
3 provide a clear statement of the law to lawyers and
4 those that are impacted by the law.

5 Under what circumstances would you feel it
6 necessary to write a dissent or concurrence.

7 A. I think if I felt it necessary to write a dissent,
8 I certainly would, if I felt necessary, but it
9 would have to be that I had some compelling reason
10 during my research to think that it ought to be
11 some other way. But I don't know what that would
12 be. I can't envision that.

13 In a concurrence, I guess, you're kind of up
14 or down on it. You're either in or you're out.

15 **Q. And what do you think you would bring to the court
16 to help avoid some split decisions?**

17 A. Well, again, I bring 25 years worth of trial
18 experience from the court. I've done my own
19 research over the years that I've practiced law. I
20 still do my own research, Senator. My law clerk
21 does a good bit of it, I don't say he does not, but
22 I enjoy doing my own research.

23 I had the pleasure of seeing by designation on
24 the Supreme Court in the Catawba Indian case two
25 years ago, I guess, Chief Justice Toal then

1 appointing me to take her place on that. And I
2 actually got Congressman Spratt's transcripts from
3 when the hearings were held in Washington, D.C. and
4 the briefs that had been filed in the previous
5 action trying to get the flavor of what the law
6 case was about and what the lawyers were doing on
7 the Indian rights because Congress was trying and
8 is -- did they try and they do in that particular
9 case. The Indians wanted it and the Congress
10 granted it. They came out from under that federal
11 protection in exchange for the things that they
12 wanted here.

13 And so, I think that you got to do that kind
14 of -- you bring that kind of research, that kind of
15 effort to the table and that, you know, get the
16 flavor of it. Again, you get the flavor of it.
17 You haven't been the person that's standing over
18 here with the client. It's different when you're
19 just looking at words on the page.

20 **Q. All right. And you've tried many cases as a lawyer**

21 --

22 **A. Yes, sir.**

23 **Q. -- from -- with a jury trial to verdict?**

24 **A. Yes, sir, --**

25 **Q. Okay.**

1 A. -- state and federal court.

2 Q. State and federal court. And you did that for a
3 large part of your life before you got on the
4 court?

5 A. Yes, sir, 25 years.

6 Q. All right. Thank you.

7 A. Thank you.

8 CHAIRMAN CAMPSER: Representative Smith?

9 REPRESENTATIVE SMITH: Thank you, Mr.

10 Chairman.

11 EXAMINATION

12 (By Representative Smith)

13 Q. Judge Kelly, we served on the subcommittee together
14 for a number of years, so good to see you.

15 A. Good to see you.

16 Q. Not that this concerns me that greatly, but I hear
17 often about the geographic balance of the Supreme
18 Court. Obviously, there are two members from the
19 Greenville County and there's Chief Justices from -
20 - soon to be Chief Justices from Spartanburg
21 County. And so out of five if you were letting it
22 be four, what would be your comments to that
23 sentiment?

24 A. Well, the court is not divided into geographical
25 regions or districts, if you will, I submit for a

1 reason. And so I understand that. I understand
2 that having served in the General Assembly. I want
3 to say, well you got to have somebody from the low
4 country, you got to have somebody Pee Dee, you got
5 to have somebody from Midlands, and I understand
6 that. And it's not that I disagree with that
7 sentiment, but it's not -- it's not broken down for
8 a reason in that we're all hopeful that the best
9 candidate wins.

10 And, again, Representative Smith, I bring a
11 world of experience to the court, three and a half
12 years experience as a trial judge. The other thing
13 I bring is, I think I'm right about this, I'm the
14 only candidate who has ever served in the body. So
15 I think I also bring a bridge, if you will, between
16 the legislative body and the court and that's very
17 much needed.

18 **Q. Yes, sir. And, Mr. Kelly, I asked a number of**
19 **other applicants about their thought process on**
20 **quality of life with lawyers and the fact that the**
21 **Supreme Court regulates the practice of law, not**
22 **only the practice of the law, but how the courts**
23 **run and how lawyers -- what the demands are of**
24 **lawyers through being involved in the court. I do**
25 **note that you were -- you've only been on the bench**

1 for three and a half years; is that right?

2 A. Yes, sir.

3 Q. You've had to live under this change in our
4 revolving court system where we used to have a
5 court, would say, you know, every 6 weeks or so
6 more in the rural counties and now we have court
7 about every other week and that obviously creates
8 demands on lawyers who are practicing law. I
9 presume you had a similar practice. Most of us
10 being in the Magistrate Court and Family Court and
11 Common Pleas and General Sessions and Federal
12 Court, all calling.

13 A. Yes, sir.

14 Q. And so, you know, when you get on the bench --
15 obviously, the bar has got their agendas and we
16 have to dispose of cases. But tell me how you
17 would try to balance those demands for disposition
18 of cases and dockets not being out there for years.
19 A case is pending for years on dockets against the
20 lawyers ability to have some sort of quality of
21 life because it seems to me it's generally the same
22 lawyers that are in the courts and you appear
23 around the state.

24 A. Well, one of the things, that goes back to the
25 scheduling orders that I implemented at least on

1 the Circuit Court level. Now, that's not
2 necessarily on the Supreme Court and Appellate
3 Court, but certainly on the Circuit Court level.
4 And lawyers like that because I put that ball in
5 their court, so to speak. No pun intended. A case
6 has been filed. We need to come together with how
7 long you need on your deposition. What you need on
8 discovery? It can always be extended, but let's
9 just get something out there. And actually the
10 defense lawyers bar are ones that help draft the
11 order because they like it because they have to be
12 in a deposition today in Spartanburg and they got
13 to be at one this afternoon in Sumter. They may
14 have to be in another one tomorrow in Charleston.
15 So that way they can schedule it and it's so they
16 have liked that, they truly do, and just it has a
17 benchmark out there for everyone.

18 As for the Supreme Court, having not been
19 there to docket things, I can't say. Although I
20 was this past weekend at the defense lawyers and
21 Chief Justice Pleicones spoke and gave some
22 statistics and said, you know, the Supreme Court
23 had to do better, needed to do better, about moving
24 cases.

25 **Q. Thank you.**

1 A. Yes, sir.

2 CHAIRMAN CAMPSSEN: Any other questions?

3 EXAMINATION

4 (By Chairman Campsen)

5 Q. Judge Kelly, I have a few questions that I've asked
6 all candidates. First, do you believe that the
7 Supreme Court has the power to order remedial
8 legislative action in order to satisfy a case or
9 controversy against the state?

10 A. Mr. Chairman, I don't think so. I would not be
11 voting to do that.

12 Q. Okay. Do you believe that the duty of the Supreme
13 Court is to interpret the words of the Constitution
14 only according to the meaning they had when the
15 Constitution was adopted?

16 A. Yes, sir. And any cases that's been decided since
17 then, yes, sir.

18 Q. Okay. And finally, in your opinion, what types of
19 policy matters would be considered nonjusticiable
20 political questions? What types of matters would
21 be nonjusticiable political questions?

22 A. I'm sorry, Mr. Chairman, I'm not sure I understand
23 the question. I'm sorry. Nonjusticiable political
24 questions?

25 Q. That would be a question that is appropriately in

1 **the discretion of the executive or the legislative**
2 **branch --**

3 A. Well, if it's --

4 **Q. -- because it involves legislative or executive**
5 **branch discretion.**

6 A. Then those would not be before the court.

7 **Q. Okay. Thank you.**

8 CHAIRMAN CAMPSER: Any other questions?

9 REPRESENTATIVE RUTHERFORD: Yes, sir.

10 CHAIRMAN CAMPSER: Okay. Representative
11 Rutherford.

12 REPRESENTATIVE RUTHERFORD: Thank you.

13 EXAMINATION

14 (By Rep. Rutherford)

15 **Q. Mr. Chairman -- I'm sorry, not Mr. Chairman**
16 **anymore. Judge (laughter) good to see you.**

17 A. Good to see you.

18 **Q. As it relates to Langford and the decision where**
19 **the Supreme Court said it is unconstitutional to**
20 **allow the solicitors to continue to call the cases,**
21 **but they continue to call the cases this many years**
22 **later. Have you got any insight or thoughts as to**
23 **how we should move forward with the Langford**
24 **decision hanging out there?**

25 A. Well, of course, I was probably still in the

1 General Assembly when the court decided that issue
2 and it's not before me and won't be before me
3 because an order was issued and then the order has
4 been stayed. And I certainly don't want to comment
5 on what the court has done on that as a Circuit
6 Court Judge, as a lawyer.

7 But I would hope that the General Assembly
8 would get a statute put together that would lead
9 all of us in that direction is what needs to be
10 done, yeah. And you know that pilot program or
11 whatever it is where it's more or less docket
12 called by the judge, but if not, we have a
13 wonderful lady there who does that in the clerk's
14 office.

15 REPRESENTATIVE RUTHERFORD: No other
16 questions.

17 CHAIRMAN CAMPSER: Thank you. Any other
18 questions? Mr. Howard.

19 EXAMINATION

20 (By Mr. Howard)

21 **Q. Judge Kelly, good afternoon.**

22 **A. Good afternoon.**

23 **Q. How are you doing?**

24 **A. I'm great.**

25 **Q. I wanted to sort of respond to a comment you made**

1 where we both heard Justice Pleicones talk about
2 the reduction -- in part he was moving his along
3 the Supreme Court, but he was also responding to
4 the question of reducing the granting cert. And I
5 think he said that they significantly reduced the
6 grant cert.

7 A. Yeah.

8 Q. Now, in my view there's a bit of a balance there
9 because at the same time we don't want to make it a
10 quota type system in the Supreme Court.

11 A. Sure.

12 Q. Have you given any thought or -- I know there's
13 some guidance in the rules -- in the Appellate
14 Court rules, but have you given it a thought on
15 what sort of philosophy you might have in reviewing
16 and granting cert?

17 A. No, I'm sorry. I have not, Mr. Howard. I have
18 not. I heard him say that and, you know, I take it
19 from his comments that he was -- he's talking about
20 granting cert on -- from the Court of Appeals where
21 -- I think he was specifically talking about PCRs.
22 I think he was talking about PCR.

23 Q. He had mentioned PCRs. I was just -- I was curious
24 if that had -- if you had given any of that a
25 thought in running for this position or in your

1 **role in granting cert from court level?**

2 A. I have not because this weekend when he spoke is
3 the first time I had heard that he had -- that the
4 court had reduced the number of certs that had been
5 granted on PCR and he gave the specifics about the
6 numbers that it had been -- had reduced that. And
7 I thought it was ironic because just that -- this
8 last week I was here -- I was in Lexington County
9 doing PCRs. So it really raised my attention when
10 he said that.

11 **Q. Okay. Thank you.**

12 CHAIRMAN CAMPSSEN: Any additional
13 questions from members?

14 (No response.)

15 CHAIRMAN CAMPSSEN: Okay. There being
16 none. Judge Kelly, thank you for being with
17 us and for offering yourself as a candidate
18 for the Supreme Court. This concludes this
19 portion of the screening process. As you
20 know, the record will remain open until the
21 formal release of the report of qualifications
22 and you may be called back at any such time if
23 the need arises. I thank you for offering and
24 thank you for your service to the State of
25 South Carolina.

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JUDGE KELLY: Thank you, Mr. Chairman.

CHAIRMAN CAMPSSEN: Thank you.

(Candidate excused.)

CHAIRMAN CAMPSSEN: That completes the business for today. We are only 20 minutes behind, not bad. We will start at 9:30 in the morning with an executive session. So everyone try to be here on time. Having finished the business today, we stand adjourned or in recess until tomorrow morning.

(There being no further questions, the proceedings recessed at 5:19 p.m.)

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CERTIFICATE OF REPORTER

I, LISA F. HUFFMAN, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT-LARGE, HEREBY CERTIFY THAT I REPORTED THE SAID PROCEEDINGS, ON THE 14TH DAY OF NOVEMBER, 2016, THAT THE CANDIDATES WERE FIRST DULY SWORN AND THAT THE FOREGOING 221 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID PROCEEDINGS TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO, JUDICIAL MERIT SELECTION COMMISSION, 1101 PENDLETON STREET, COLUMBIA, SOUTH CAROLINA 29201, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

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